

19 MAY 1947

I N D E X

Of

EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
1536	2613		Excerpt from Prosecution's exhibit No. 761-A entitled "Military Views on Foreign Problems from the Standpoint of the Kwantung Army's Mission" expressed by the Meeting with Ambassador ARITA by Chief Staff Officer of the Kwantung Army, Major-General ITAGAKI, Seishiro		22468
1422	2614		Telegram Message of Foreign Minister ARITA Addressed to Japanese Ambassador to Germany MUSHANOKOJI, dated 8 May 1936		22474
			<u>NOON RECESS</u>		22479
1426	2615		Telegram of Ambassador SUGIMURA Addressed to Foreign Minister ARITA, dated 18 November 1936		22500
1427	2616		Telegram to Ambassador SUGIMURA Addressed to Foreign Minister ARITA, dated 28 November 1936		22502
			<u>AFTERNOON RECESS</u>		22513

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1310	2617		Report from the German Ambassador in Tokyo, von Dirksen, to the German Foreign Office in Berlin, dated 24 March 1937 re the Conversation with the Japanese Foreign Minister SATO		22513
1428	2618		Telegram Dispatched by Ambassador SUGIMURA and Addressed to Foreign Minister SATO, dated 25 May 1937		22524
1314	2619		Telegram from the German Foreign Office sent by the German Under Secretary of State Weizacker to the German Ambassador in Tokyo, dated 15 May 1939		22540

Monday, 19 May 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

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Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: We have come to a conclusion
4 on the affidavit last presented. We think that
5 it infringes rules laid down by the Tribunal, more
6 particularly, the rules relating to documents and
7 relating to the evidence of communistic and other
8 activities against Japanese nationals and property.

9 As to the latter rule, it may possibly be
10 within it, but that does not appear on the face of
11 the document. If the affidavit is redrafted so as
12 to show where are the documents on which it was based,
13 the originals; what happened to those originals; what
14 happened generally to the documents of the South
15 Manchurian Railway Company that are relied upon; and
16 that if further it shows compliance with the rule
17 as regards communistic and other activities against
18 Japanese nationals and property and omits all opinion,
19 it may, on being tendered, be accepted by a majority
20 if not by all the Members of the Tribunal.

21 The objection to the present affidavit is
22 upheld and the document rejected.

23 MR. OHARA: Paying attention to what has
24 been stated by you, Mr. President, the affidavit will
25 be redrafted.

1 THE PRESIDENT: You are wasting time and
2 money and materials and services in tendering docu-
3 ments which do not comply with our rules. It is
4 inevitable that all such documents will be rejected.

5 Mr. Cunningham.

6 MR. CUNNINGHAM: Your Honor, this question
7 that has just been decided has a bearing on much
8 of our other evidence which I propose to introduce,
9 and I wonder if I could just say a word or two about --
10 comment upon the subdivisions of your ruling just
11 now and explanation so that I will not have to do it
12 piecemeal as I go through my list of documents.

13 THE PRESIDENT: The decision just given has
14 been carefully considered. It is for the majority
15 of the Tribunal to say whether they will review it.
16 Personally, I will not.

17 MR. CUNNINGHAM: Well, in the first place,
18 your Honor, Mr. OHARA was not through with his
19 argument on the question Friday when the Court ad-
20 journed, and these points were covered in his subsequent
21 argument which was prepared.

22 THE PRESIDENT: Mr. Tavenner.

23 MR. TAVENNER: If it please the Tribunal,
24 the record is perfectly clear on the point just
25 mentioned by counsel. There is nothing to indicate

1 that counsel desired to be further heard on the
2 matter.

3 THE PRESIDENT: I certainly tried to cut him
4 short when I thought he was repeating himself, but
5 a colleague, with more liberal views than I had at
6 the time, suggested hearing him to the finish and we
7 did. Then, at page 22,438 of the transcript it appears
8 that I told Mr. OHARA he wasn't adding to his argument,
9 he was repeating it, but he continued for a line or so.
10 Then I said, "Well, have you anything to add?" and
11 Mr. OHARA said this: "I merely wish to state that
12 I will avoid reading the part in these documents
13 which may be considered as opinion, and also I submit
14 to this Tribunal that the testimony of this witness
15 is within the ruling of the Court." We then adjourned
16 five minutes earlier to give our -- to consider our
17 decision. We gave our considered decision this
18 morning. That is the position, Mr. Cunningham.

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MR. CUNNINGHAM: Well, your Honor, may I

1 state my understanding, so that I can preface my remarks
2 on the introduction of future documents and affidavits?
3 It is not my understanding that affidavits come under
4 the rules applied by the Court to other documents, and
5 that is the first section of the Court's ruling this
6 morning.

7 THE PRESIDENT: I venture to say that every
8 Member of the Court disagrees with you. I am slow in
9 venturing to speak for all, But I am sure of their
10 opinion about that.

11 MR. CUNNINGHAM: In the interest of saving
12 time, the witness is here and could account for
13 these documents very readily in a 5-minute discussion
14 with the witness, instead of redrafting the affi-
15 davit, which will take hours and maybe days and
16 additional reprocessing. It seems to me that it is
17 a simple process to call the witness and ask him
18 where the documents are.

19 THE PRESIDENT: As a colleague states, whether
20 evidence is viva voce or on affidavit, there must
21 still be the best evidence, whether on documents
22 or otherwise; and you are urged by other Members
23 of the Court to read the rulings of the Court, Mr.
24 Cunningham. They apply to your particular accused
25

1 as well as to the other accused.

2 MR. CUNNINGHAM: Your Honor, my thought is
3 that it depends upon the part of the record you read.
4 Now, the best evidence rule, as I understand it,
5 does not apply in this court, it has not for the
6 prosecution, and does not under the Charter. That
7 is the way I interpret it.

8 THE PRESIDENT: We don't reject evidence
9 because of non-compliance with the best-evidence
10 rule, but we insist on the best evidence available,
11 and it is for you to prove that it is not available.
12 We are called upon to decide matters of the greatest
13 importance in all history, and surely we have a duty
14 to get the best evidence that is available, and you
15 have a duty to show whether that evidence is avail-
16 able or not.

17 MR. CUNNINGHAM: Well, your Honor, you
18 must trust us to make every effort to give you the
19 best evidence that is available. Under the Charter
20 our obligation is either to give you the best evi-
21 dence or state it is not readily available. That
22 is the way I read the Charter.

23 THE PRESIDENT: We are asking you to com-
24 ply with the Charter, which makes probative value
25 the test, and probative value depends upon the

1 strength of the evidence. We want the strongest
2 evidence you can get, and if you can't get it you
3 can say so. But you must say so on oath. If you
4 can't get the document tell us why. Give us your
5 reasons. Make them as convincing as you can, but
6 put them on oath.

7 MR. CUNNINGHAM: Your Honor must assume
8 that we are going to give you the best possible evi-
9 dence that is available, and the only way that I
10 can account for the documents which you want accoun-
11 ted for is to ask the witness, under oath, to say in
12 court where those documents are, where he inspected
13 them, where he believes they were at the time, and
14 why they are not in his possession now; and I can do
15 no more.

16 THE PRESIDENT: Obviously there is no
17 difference between us, Mr. Cunningham, except this:
18 that we want you to state in the affidavit where
19 the document is and why it is not available if you
20 don't produce it. We expect you to give us in the
21 affidavit convincing reasons for the non-production
22 of any document on which you rely. You surely can-
23 not reasonably withhold your consent to do that.
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1 MR. CUNNINGHAM: Well, your Honor, this
2 affidavit was prepared in the light of many consid-
3 erations and certainly we cannot keep an affidavit
4 as a running commentary of the twenty-four hour
5 rulings of the Court. The rulings here in court
6 cannot be kept current in the affidavits. We have
7 to prepare them in accordance with our understanding
8 at the time the affidavit is drafted, and that is
9 what was done in this case, and it would be a simple
10 matter to correct it now.

11 THE PRESIDENT: This affidavit is dated the
12 first of May long after the rulings to which I have
13 referred.

14 MR. CUNNINGHAM: Yes, your Honor, but that
15 affidavit was in the process of making long before,
16 perhaps, and that is just the culmination, that is
17 when the affidavit was finally signed by the witness,
18 but that is no criterion to determine when the
19 affidavit was prepared.

20 THE PRESIDENT: It wasn't an affidavit when
21 we gave our ruling, it had yet to become one and our
22 ruling should have been complied with. The more we
23 hear from you, the more convinced we are we should
24 adhere to our decision even if we were inclined to re-
25 open it.

1 MR. CUNNINGHAM: Well, I hope I will be more
2 convincing of the second point, which concerns all my
3 documents, and that concerns the question of
4 communism in China and elsewhere which perhaps fit
5 the documents which were introduced in the China
6 phase up to that point, but it is my suggestion that
7 the ruling of the Tribunal on that question, as far
8 as the Anti-Comintern Pact, does not go far enough.

9 THE PRESIDENT: Among other rulings, all
10 affidavits should comply with our rulings about
11 ideologies.

12 MR. CUNNINGHAM: I would ask that the
13 Tribunal adopt this rule as applicable to the evidence
14 relating to the Anti-Comintern Pact which is the
15 American rule, the policy of the American government,
16 as I understand it, as recently announced.

17 THE PRESIDENT: This is not an American
18 court. This court is international and non-political
19 and I should not have to tell you that, Mr. Cunningham.

20 MR. CUNNINGHAM: Your Honor, I understand
21 perfectly the limitations, I am only asking in this
22 Tribunal for the adoption of a rule of evidence for
23 the introduction of testimony and the documents in
24 this Anti-Comintern Pact which I think is sound,
25 reasonable, legal and which certainly serves as a

1 justification for the activities which the Japanese
2 leaders took in bringing about the Anti-Comintern
3 Pact and I should certainly be allowed to state the
4 rule.

5 THE PRESIDENT: This Court is not going to
6 be dragged into the vortex of national politics of
7 any kind. The debate is closed.

8 MR. CUNNINGHAM: We now offer, as proof
9 of the development of the communist activities in
10 China, defense document No. 960-F which unfortunately
11 was not processed in time for presentation last
12 month. It is a document found in the Foreign Office
13 and embraces the view of what took place in China,
14 which view later formed part of the basis of
15 the Japanese policy toward the communist activities.
16 The view is corroborated completely in the terms of
17 the Anti-Comintern Pact.

18 MR. COMYNS CARR: Your Honor, in my sub-
19 mission this document equally offends against all
20 the rulings of the Court. It is an intelligence
21 report compiled by an unknown author and it deals
22 exclusively with the history of the Communist Party
23 in China. There is no reference in it, as far as I
24 can discover, to any activities or plan of activities
25 against Japan of any sort or kind. It is therefore

objectionable both by its nature and contents.

1 MR. CUNNINGHAM: Well I submit that the
2 Anti-Comintern Pact was directed against the
3 spreading of communism in Asia and any evidence on
4 that proposition to justify the fears and to justi-
5 fy leaders in bringing about that pact has probative
6 value, is vitally important and certainly is material
7 and relevant to the issues in this case.
8

1 THE PRESIDENT: Mr. Cunningham, on the
2 general phases, we endeavor to ascertain the actual
3 facts. But, when we come to deal with the individuals,
4 then each individual accused can say what his fears
5 were about, say, communism. We have already made
6 that plain. You cannot ascertain the actual facts
7 of any particular phase, what was said, and what was
8 done, by ascertaining the state of mind of twenty-
9 five accused people. They were in varying states
10 of mind, very probably. But, no matter what may be
11 the state of facts on an individual phase, the de-
12 fense is always open to state that the accused acted
13 on a belief, although a mistaken one. Therefore,
14 each individual accused will be entitled to tell us
15 what was his belief, regardless of what may have been
16 the facts; and, if his belief was reasonable and
17 honest, it may be a defense to him.

18 I should like to ask Mr. Comyns Carr what
19 case the prosecution allege the defense have to meet
20 in regard to the Anti-Comintern Pact.

21 MR. COMYNS CARR: Your Honor, in our submis-
22 sion it really raises three points: If this Anti-
23 Comintern Pact was nothing more than appears on its
24 face, a mutual agreement to exchange information and
25 even to assist one another in resisting the spread

1 of communism in their own countries, then I would
2 say no case at all. Various people may agree or dis-
3 agree with such a policy, but it involves no breach
4 of international law. But, when it is used, as I
5 understand from the remarks of my learned friend just
6 now, it is proposed to be used, as an excuse for
7 armed intervention in order to prevent the spread
8 of communism in another country, namely China, then,
9 we submit, that does involve a serious breach of
10 international law, just as much as armed interven-
11 tion in the internal affairs of any other country
12 for any other reason.

13 Secondly, we say that the secret protocol
14 attached to it shows that it was not a genuine Anti-
15 Comintern Pact at all but an alliance against the
16 Union of Soviet Socialist Republics.

17 Thirdly, we say that it was the first step
18 towards the much wider agreement of common action
19 which was finally crystallized in the Tri-Partite
20 Pact of September, 1940. We do not suggest that it
21 has any significance in this case beyond those three
22 aspects.

23 THE PRESIDENT: Yes.

24 MR. CUNNINGHAM: Do you wish my reaction
25 to those four suggestions that he made so that we

1 can see how far apart we are on the theory of this
2 Anti-Comintern Pact in this trial?

3 THE PRESIDENT: Now that we know what the
4 prosecution is suggesting you have to meet, I think,
5 in fairness to you, we should have your understand-
6 ing of what you have to meet.

7 MR. CUNNINGHAM: On the first point, of
8 whether or not the Anti-Comintern Pact and the sec-
9 ret agreement means what it says or means something
10 else, we propose to prove that it means just exactly
11 what it says.

12 On the second point, the effect of the sec-
13 ret agreement, we propose to show that the secret
14 agreement was abrogated, that it should not be an
15 issue in this case, that it was violated by one of
16 the parties, and that it was agreed that it had no
17 further force and effect between the direct parties
18 to it.

19 On the third proposition, whether or not
20 the Anti-Comintern Pact and the secret agreement
21 was the first step forward toward a conspiracy, we
22 expect to prove that it was the first step forward
23 toward curtailing the spread of communism in Asia.
24 The prosecution has charged four or five paragraphs
25 in Section 7 of the Appendix to this Indictment con-

cerning the effect of this pact, and we propose to
meet every line of that 7th Section pertaining to
the Anti-Comintern Pact.

Now, on the suggestion of the Tribunal that,
perhaps, the defendants were mistaken in their be-
lief that this was a good thing, I believe that
there was difference of opinion, but I think that
history has shown, and I believe they think now, that
it was a good thing and that they were not mistaken
about it; but I cannot say for sure on that. That
is a matter of the present rather than the past.

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1 THE PRESIDENT: It is their belief at the
2 time they did the things charged, if they did them,
3 that matters, not any subsequent belief.

4 MR. CUNNINGHAM: I have one more point on the
5 first observation made by your Honor about when to
6 offer this evidence.

7 I suggest that we should be permitted to use
8 our judgment when we think the evidence would be most
9 effective in the presentation of it, and that it isn't
10 necessary to prolong the agony of hearing this testimony
11 at one time another. Our thought is that this is the
12 best, the most logical, the chronological and the most
13 agreeable time to us, and the most effective to offer
14 this evidence.

15 THE PRESIDENT: On the phases we are to ascer-
16 tain the actual facts. In the case of each accused we
17 may consider his mistaken belief as to the facts. They
18 are two different things. You can't mix them.

19 You can't ascertain the actual facts of any
20 particular situation by taking into account the indiv-
21 idual beliefs of twenty-five different men when those
22 individual beliefs may have been entirely different.

23 MR. CUNNINGHAM: We adopted the theory that
24 you must meet a general issue by general proof and not
25 a general issue by special proof. Now, that is my

1 thought on the thing.

2 THE PRESIDENT: To secure what you want we
3 would have to have, say, twenty-five Manchurian phases;
4 we would have the ARAKI Manchurian phase, the DOHIHARA
5 Manchurian phase, the ITAGAKI Manchurian phase. How
6 absurd.

7 MR. CUNNINGHAM: Your Honor, that sounds to
8 me like your argument. I am arguing for just the
9 opposite, that we as individuals do not wish to answer
10 all of these general propositions, but we are only
11 interested in answering the things for which the indiv-
12 iduals are charged, not the broad governmental policy
13 of Japan while these men were in office.

14 THE PRESIDENT: You forget that we did not
15 insist upon proof by phases. The prosecution suggested
16 it. There was no dissent. You adopted it; you, the
17 defense, adopted it. We did not insist on that.

18 MR. CUNNINGHAM: Well, your Honor, you are
19 addressing one of the defense counsel who opposed pre-
20 senting our case in phases, but I was overruled by the
21 majority. And, certainly, I shouldn't be put in the
22 position where I am condemned for adopting a thing that
23 I am merely advocating because the majority were in
24 favor of it.

25 THE PRESIDENT: Having personally vindicated

1 yourself, I will now give the decision of the Court
2 on the question whether this document should be admitted.

3 By a majority, the objection is upheld and the
4 document rejected.

1 MR. CUNNINGHAM: Now I present defense
2 document 959-A, which is the second document unpro-
3 cessed at the time of the last presentation of evi-
4 dence on the communist problem. It shows conditions
5 which operated in China as a forerunner of the events
6 which led up to the Anti-Comintern Pact. Unless this
7 document is allowed, it will be necessary for us to
8 present a witness on the subject covered. This is a
9 time-saver, and since it is merely background material,
10 elaborated upon in later official declarations of
11 Japanese statesmen, we ask that it be received for
12 whatever probative value it may have now. It is very
13 difficult to evaluate it unrelated to the evidence to
14 follow. I refer to defense document 959-A, as part
15 of an official document produced in the Asiatic Bureau
16 of the Ministry of Foreign Affairs of Japan; and I
17 refer especially to the words "armed action" on page 26.
18 It is something to reflect upon.

19 MR. COMYNS CARR: May it please your Honor,
20 this document is subject to exactly the same
21 objections as the last. The minor objection is that it
22 is a compilation of a historical character by an
23 unknown author; but the major objection is that if
24 every single statement in these twenty-seven pages
25 were true, it could not possibly have any bearing on

1 any real issue in this case nor afford any defense to
2 any of these accused.

3 There is not, as far as I can trace, any
4 reference to Japan in it throughout; and in that
5 connection I remark that it is clear, if one looks at
6 page 26, that the armed action referred to is armed
7 action against the Nationalist Government of China.
8 That is to say, the document deals purely with internal
9 disputes, political and apparently possibly also
10 military, within China; and in our submission neither
11 the actual existence of such a state of affairs nor an
12 honest belief in its existence could possibly form any
13 justification for hostile action by Japan against China
14 or any party in China.

15 But I should like to guard against possibly
16 being thought to admit that if the contemplated armed
17 action was against Japan or the Japanese, it would be
18 in any different position. In my submission, anybody
19 in China was justified in contemplating or advocating
20 armed action against the Japanese for either of two
21 purposes: either for the purpose of recovering the
22 territory which in December 1932, the date of this
23 document, had already been unlawfully occupied by
24 Japan, or for the purpose of resisting further Japanese
25 aggression. I cannot find in this document any

1 reference to either of those matters, but I wish to
2 guard the position from being misunderstood in the
3 future.

4 THE PRESIDENT: We will recess for fifteen
5 minutes.

6 (Whereupon, at 1045, a recess was
7 taken until 1100, after which the proceedings
8 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Cunningham.

4 MR. CUNNINGHAM: If the Tribunal please,
5 I suggest that, naturally, Mr. Carr takes a very
6 narrow view of what our evidence should cover in this
7 case but I take the broad view that the existence any-
8 where in 1936 of a communistic-dominated government
9 was a matter of vital concern to the national security
10 of Japan. Now, that is my theory on the second propo-
11 sition, China especially in Asia particularly and in
12 the general Far East generally. This document **bears**
13 upon this theory of the case and should be admitted.

14 THE PRESIDENT: Have you finished? I will
15 take the decision of the Court on the document.

16 By a majority the Court upholds the
17 objection and rejects the document.

18 MR. CUNNINGHAM: Although there is some
19 question as to whether or not the next document comes
20 under the rule, it is in my order of proof and I ask
21 that, for continuity, it be offered in evidence. It
22 is an excerpt from the official publication of the
23 Asia Bureau of the Japanese Foreign Ministry and is a
24 report on communist movement in China and Manchuria
25 as of December 1932 and differs from the previous

1 document offered. This one stresses the fact that
2 the communists were active and merely biding their
3 time when they would expand their activities into
4 the central government of China. This created a
5 definite threat to Japanese security. This document
6 contains facts which relate to the issue involved.
7 It is difficult now to determine its total probative
8 value isolated from the theme which we propose to
9 establish by our evidence. We offer defense document
10 959-B.

11 THE PRESIDENT: Mr. Comyns Carr.

12 MR. COMYNS CARR: May it please the Tribunal,
13 this document is subject to both of the objections of
14 the previous one. It comes from the same book and it
15 deals with the same subject matter. The only differ-
16 ence is that it deals mainly with an internal dispute
17 within the Chinese communist party itself.

18 May I point out that the affidavit sub-
19 mitted this morning and two exhibits thereto which
20 the Court have not seen, and one of which has never
21 been served, together with the three documents, the
22 two documents last dealt with and this one, all of
23 which I understand were processed after the Court's
24 previous ruling, appear to have involved the consumption
25 of approximately 14,000 sheets of paper.

1 MR. CUNNINGHAM: If your Honors please,
2 my calculation was slightly under that but these
3 documents were processed because we felt firmly that
4 the Tribunal would reconsider that proposition. The
5 documents were in process for the China phase and I
6 firmly believe that the documents are still admissible
7 and that it is not a waste and that they will be used
8 subsequently in this trial if properly identified
9 and will be proven relevant and material as well,
10 and I think the criticism is not well founded.

11 THE PRESIDENT: In processing documents
12 we expect you to keep the Court's rulings in mind.
13 If you do not do so, some steps will have to be
14 taken.

15 MR. CUNNINGHAM: I must say for myself,
16 your Honor, that the amount of paper we use in the
17 processing of documents is a matter of very little
18 concern to me. I do not think it is necessary even
19 to have the documents processed. If I have the
20 original I will find a way to offer it to this
21 Tribunal in evidence. Whether we can duplicate it
22 or whether we can't, that is no matter of consequence
23 to me.

24 THE PRESIDENT: By a majority the
25 Court upholds the objection and rejects the document.

1 MR. CUNNINGHAM: At this time I call the
2 Court's attention to exhibit No. 2373, 2375 and 2376,
3 which are the excerpts from the prosecution's witness
4 John B. Powell's book, "My Twenty-five Years in China,"
5 to show the activities of the communists in China.
6 These documents show that the Russians were using
7 their concessions in China to spread communistic
8 propaganda through China. These documents corroborate
9 our other evidence and witnesses' testimony. I call
10 special attention to the item on the top of page 2,
11 202-K-1.

12 THE PRESIDENT: General Vasiliev.

13 GENERAL VASILIEV: I ask you to hear my
14 objections as to the document, exhibit 2373.

15 If the Tribunal please, I object to the
16 reading of the parts of this document which haven't
17 been read before and again using these parts in the
18 Russian phase. This excerpt from Mr. Powell's book
19 was introduced by the defense in another phase on
20 March 14. Then Mr. McManus said that the excerpt was
21 introduced for the purpose of proving that Russia was
22 forced to defend her interests in China because there
23 were troubled conditions in China. In accordance with
24 this statement a part of page 3, the first three para-
25 graphs, was read.

1 I contend that by reading this excerpt the
2 document, No. 2373, was used to full extent. Now
3 the defense proposes to use other parts of this
4 excerpt trying to prove by it other matters which were
5 not held in review by the Court when they accepted the
6 excerpt. These other parts of the excerpt contained
7 opinions of Mr. Powell which can have no probative
8 value at all for it speaks about events which Mr.
9 Powell didn't witness and about which he speaks in
10 words of third persons from entirely unknown sources.
11 Besides, this description of the events is of a
12 very uncertain or, simply, even slanderous nature.
13 The proving of contents of events of such kind by
14 excerpts from the book written by a newspaperman who
15 endeavored to make his book a thriller for the readers
16 is absolutely inadmissible. It would be contrary to
17 the attitude toward this book stated by the Tribunal.
18 Therefore, I ask to reject the whole part of this
19 excerpt not read before.
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1 THE PRESIDENT: How much of that exhibit
2 was tendered and how much admitted?

3 GENERAL VASILIEV: I remember that
4 Mr. McManus in introducing this excerpt gave his
5 grounds for introducing it, and I spoke about his
6 grounds to the Tribunal now. He explained that he
7 was interested in the part which was read and that
8 part was actually read.

9 THE PRESIDENT: Well, I would like to know
10 just what he said as reported in the transcript.
11 Can somebody come to our assistance immediately
12 with the transcript and the page? Exhibit 2373
13 was admitted not so many days ago, but I would take
14 it that we admitted only the part that was intended
15 to be relied upon because there must have been much
16 immaterial and irrelevant matter in that excerpt.

17 What I want is the transcript showing what
18 Mr. McManus said to us and what we said to him when
19 that document was admitted.

20 GENERAL VASILIEV: The people are sent to
21 bring the transcript.

22 THE PRESIDENT: That is the only way to
23 deal with a matter of this kind -- to refer to the
24 page of the transcript. That alone contains exactly
25 what was said by the Court and by counsel. I would

1 like to hear Mr. Cunningham on what he is offering
2 of this excerpt. I would like to know what Mr.
3 Cunningham is offering.

4 MR. CUNNINGHAM: Your Honor, I couldn't
5 see what he was objecting to because I just called
6 attention of the Court to the exhibit, to read it,
7 to determine whatever it has in the exhibit of
8 value to this proposition that we are proving.
9 I am not intending to read any of the document.

10 THE PRESIDENT: If Mr. Cunningham is
11 referring merely to the exhibit, we need not have
12 any discussion.

13 GENERAL VASILIEV: If the defense wants
14 to read that excerpt which has been read before
15 I will withdraw my objection.

16 THE PRESIDENT: They have not indicated
17 what they want us to consider yet.

18 Mr. Cunningham.

19 MR. CUNNINGHAM: I have already stated what
20 I think the document does for us, and I just want
21 the Court to consider the document in the light of
22 my introductory remarks. That is all.

23 THE PRESIDENT: So far as it is a document
24 before us we will consider it. There is no occasion
25 for the objection. The objection is overruled.

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1 MR. CUNNINGHAM: I now offer in evidence
2 defense document 1536, an excerpt from the prosecution's
3 exhibit 761. In this document General ITAGAKI, Chief
4 Staff Officer of the Kwantung Army, explained to ARITA
5 on 28 March 1936 the communistic menace, emanating
6 from Soviet Union, which faced the Kwantung Army. This
7 same condition.

8 We next offer defense document 1422 which is
9 one in a series of telegrams --

10 THE PRESIDENT: I haven't given any pronounce-
11 ment on this. I never do until I see the document.
12 You have to hand it to me before I make any pronounce-
13 ment.

14 MR. CUNNINGHAM: I beg your pardon.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Defense document 1536
17 will receive exhibit No. 2613.

18 (Whereupon, the document above
19 referred to was marked defense exhibit
20 No. 2613 and received in evidence.)

21 MR. CUNNINGHAM: Your Honor, is it necessary
22 to give these exhibits numbers when they are already
23 introduced?

24 THE PRESIDENT: We understand that this docu-
25 ment which has been marked 2613 and is defense document

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20 No. 2613 and received in evidence.)

21 MR. CUNNINGHAM: Your Honor, is it necessary
22 to give these exhibits numbers when they are already
23 introduced?

24 THE PRESIDENT: We understand that this docu-
25 ment which has been marked 2613 and is defense document

1 No. 1536 is tendered for the first time.

2 MR. CUNNINGHAM: I may be in error about this,
3 Your Honor. This is an excerpt from prosecution exhibit
4 761-A.

5 THE PRESIDENT: Some of these prosecution
6 exhibits have been admitted as to part only, if I under-
7 stand correctly. If this exhibit has been wholly ad-
8 mitted, there is no occasion for this particular part
9 to be marked again as an exhibit.

10 MR. CUNNINGHAM: 761-A has been marked an
11 exhibit, as I understand it, and this part was not
12 read.

13 THE PRESIDENT: If this part was admitted
14 before, there is no need for another exhibit number.
15 That is all I can say.

16 Mr. Comyns Carr.

17 MR. COMYNS CARR: Your Honor, perhaps I can
18 help my friend. 761 was marked for identification at
19 page 7,830, but the part that was read and introduced
20 as 761-A appears to be a different part from what my
21 friend is now tendering. Therefore, it should have a
22 new exhibit number, either 761-B to identify it with
23 the parent document, or a new one.

24 THE PRESIDENT: Read it as exhibit 2613, Mr.
25 Cunningham; that is, if you propose to read it.

1 MR. CUNNINGHAM: Omitting the formal parts,
2 coming to Part I, "Soviet Problems":

3 "The Kwantung Army is most deeply concerned
4 in problems against Russia. and acknowledges the in-
5 disputable fact that her national power of defense is
6 increasing largely with years. In the military field
7 she has recently made efforts to replenish the army
8 whereby the number of troops, in whole, has amounted
9 to more than, 1,400,000, and her military system,
10 organization, equipment, disposition of forces are being
11 re-arranged to attain the most ideal form of army.

12 "Thus, she has come to be called, both in name
13 and reality the most powerful army nation of the world.
14 The development of her heavy industry has attained,
15 in general, her expected results and especially in
16 munitions production she is now capable of producing
17 them independently. While on the other hand, her light
18 industry has also developed, owing to her strenuous
19 efforts, whereby recently a light of hope can be dis-
20 cerned in her people's private life. Moreover, in
21 agriculture, which is the substantial basis of her
22 national economy, she has nearly completed socialization
23 in face of great difficulties. Thus the people, in
24 general, who had put up with long-age distresses and
25 destitution have now been barely releaded from their

1 predicament to step a pace forward towards peaceful
2 life. During all the while the government has consol-
3 idated its basis and has succeeded in establishing an
4 unprecedentedly firm dictatorship.

5 "Observing the situation in the Far East, in
6 which we have special concerns directly, with reference
7 to foregoing circumstances, we cannot but convince our-
8 selves that the Soviet is not only preparing for oper-
9 ations by force but is making the utmost efforts to
10 strengthen her power, in a wider sense, of prosecuting
11 war alone by herself. We may say so, because she is
12 overtly advocating the independence of Far East military
13 preparations and has assigned more than 200,000 troops
14 and nearly thousand planes and tanks respectively to
15 the Far Eastern district, ever so thinly populated
16 and poor in natural resources. Moreover, she is
17 endeavoring to replenish communications and supply
18 functions and is, at the cost of great expenses and
19 sacrifice, devoting herself to attain an epoch-making
20 point in exploiting the economy and transportation of
21 said district.

22 "Under such circumstances, Soviet's attitude
23 toward Japan has gradually stiffened to be more active,
24 in comparison with her inactive and negative attitude
25 two or three years ago, although she has not yet assumed

1 to be provocative, taking advantage of our weakness in
2 view of her development of national and armed power as
3 well as of our clarification concerning situations at
4 home and abroad.

5 "For example, since last year, the foreign
6 strategy of 'Third Internationale' has been so revised
7 actively as to assume Japan their main object. They
8 then resolved to cooperate in fighting with all anti-
9 war members, putting aside their former opinion, and,
10 in their activities toward China, as well, they did
11 not always deny the existing social system, withdraw-
12 ing their banner of communism from the surface and
13 advocating wholeheartedly 'Anti-Fascism' or 'Anti-
14 Imperialism'. Slogan of 'Bolshevization Patriotic
15 Movement' by communist forces in North China has accord-
16 ingly been replaced by that of 'Anti-Japanese Patriotic
17 Movement.' (This coincides with the slogan held by
18 the Kuomintang.)

19 "As another example, though the number of bandits
20 all over eastern Manchuria has been reduced, the
21 communist bandits, still making stubborn resistance,
22 are increasing their power by annexing other bandits.
23 Furthermore, they are taking firm attitude with regard
24 to problems of bounday and fishery as well as other
25 problems concerning Manchuria. (Problems concerning

1 Outern Mongolia, consulate and etc.).

2 "In brief, the fact that the national strength
3 of U.S.S.R. has been increasing year by year and that
4 her attitude toward Japan has consequently come to be
5 stiffened or defiant in recent years cannot be over-
6 looked.

7 "Though, in fact, she is not expected to take
8 arms against Japan positively, it is undeniable that
9 she would take actions more positively in near future."

10 We next offer defense document 1422 which is
11 one in a series of telegrams between Foreign Minister
12 ARITA and Japanese Ambassador to Berline, MUSHOKAJE.
13 It has been suggested that anti-comintern pact negoti-
14 ations were conducted beyond diplomatic channels. This
15 and other similar documents will thoroughly refute this
16 charge and establish the opposite.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Defense document 1422
19 will receive exhibit No. ---

20 MR. CUNNINGHAM: Skipping the formal parts --

21 MR. COMYNS CARR: I was going to take an objec-
22 tion, your Honor. I did not hear that my friend had
23 finished.

24 THE PRESIDENT: Well, I waited some seconds,
25 Mr. Carr.

1 MR. COMYNS CARR: May I be heard, your Honor?

2 THE PRESIDENT: We must hear what you say if
3 you were under misapprehension, as you undoubtedly
4 were. I never question your word.

5 MR. COMYNS CARR: This document is quite short,
6 but in my submission it is of no value in throwing
7 any light whatsoever concerning any issue in the case.
8 The only foundation that I know of for my friend's
9 statement that it has been suggested that this pact
10 was negotiated outside diplomatic channels is that
11 we called attention to the fact that the accused SHIMADA
12 was decorated in connection with it. In my submission
13 the document does not serve any purpose.

14 MR. CUNNINGHAM: Well, I suggest, your Honor,
15 that that is the sort of commitment we like to hear
16 from the prosecution, that that is all the effect they
17 consider the relations between Japan and Germany and
18 the negotiations of this Anti-Comintern Pact to bear
19 upon.

20 THE PRESIDENT: The objection is overruled
21 and the document admitted.

22 CLERK OF THE COURT: Defense document 1422 will
23 receive exhibit No. 2614.

24 (Whereupon, the document above referred
25 to was marked defense exhibit No. 2614 and re-
ceived in evidence.)

1 MR. CUNNINGHAM (reading): "Various condi-
2 tions indicate the necessity for closer relations
3 between Japan and Germany. It is considered proper,
4 if Germany desires it, to make a vague engagement
5 without limiting the matter for the present, as I
6 charged you before you left Japan.

7 "As for the details of the engagement, they
8 are now under consideration. But before everything,
9 it is necessary for Japan to discern the limit and
10 substance of the German claim.

11 "In this connection, you are requested to
12 shun courting attitudes, and promptly report the
13 result of your investigation, closely keeping in
14 touch with the leading figures of the German Foreign
15 Office and the D.N.A.D.P."

16 We now offer in evidence defense document
17 1423 to show the true picture of the communist threat
18 as recorded in the Japanese Foreign Office at a time
19 when the accused HIROTA was Foreign Minister. The
20 document corroborates what was later done and indi-
21 cates that it was a foreign office project and not the
22 doings of only the individual concerned. I submit it
23 should be received for the information it contains,
24 the weight to be reserved until it is read in the
25 light of our evidence to follow. It will definitely

1 be tied in, which was the ultimate test in the
2 prosecution's case. We hope it will not be necessary
3 to brief a witness or prepare affidavits to prove the
4 official attitude of the Foreign Office toward the
5 pact and secret agreement.

6 THE PRESIDENT: General Vasiliev.

7 GENERAL VASILIEV: If the Tribunal please,
8 I object to the introduction of this document. In
9 my submission, it has no probative value at all. We
10 do not know by whom it was written or whom it was
11 addressed to. We do not know either the purpose of
12 this document or its source. It is an article or a
13 report containing general argument and opinions. The
14 text of the document contains the contents of the
15 drafts of the Anti-Comintern Pact, several versions of
16 this pact, but the drafts are not tendered in evidence.
17 As far as I can judge, it is rather an improper way of
18 proving the existence of certain documents, and it
19 should be rejected.

20 MR. CUNNINGHAM: I suggest, your Honor, that
21 that merely goes to the weight and not the admissibility
22 of the evidence, whether it emanates from an individual
23 or a group of individuals. As long as we suggest what
24 we expect to prove by it and it comes from the Japanese
25 Foreign Office, that is all we should be bound to do.

1 THE PRESIDENT: By majority, the Tribunal
2 upholds the objection and rejects the document.

3 MR. CUNNINGHAM: We now offer to read new
4 parts of prosecution's document 1105-A, B, and C,
5 exhibit 484, for the purpose of showing:

- 6 1. That no conspiracy could possibly have existed
7 on account of the manner in which the matter of the
8 Anti-Comintern Pact was considered before it was
9 executed.
- 10 2. That only the government officials in office at
11 the time were concerned with the agreement and then
12 only in their official capacities, not as individuals.
13 The point is to be noted as significant.
- 14 3. That the Japanese policy of appeasing the Soviet
15 Union is emphasized, the opposite of an aggressive
16 attitude.

17 I propose to read from exhibit 484, beginning
18 at the bottom of page No. 2:

19 "The present Japanese-German pact comprises
20 two pacts: Pact against the Communist Internationale
21 and the Secret Attached Pact against the Soviet Union,
22 each of which pacts contains a protocol. The gist of
23 the two pacts is as follows:

24 "I. Pact against the Communist Internationale.
25

"The said pact has as its object cooperation

1 for defence against the destructive communistic
2 activities of the Communist Internationale (so-
3 called Comintern). The signatory powers agree to
4 exchange information on the activities of the Comin-
5 tern, consult with each other in adopting necessary
6 defensive measures and achieve these defensive measures
7 through close operation. (Article I)

8 "The signatories further agree to take
9 defensive measures, in accordance with the purport
10 of the said pact, against third countries whose
11 internal peace is threatened by the comintern's
12 destructive activities, or invite such countries to
13 join the said pact (Article II). The official text
14 of this pact shall be written in both Japanese and
15 German, the pact shall become effective as from the
16 date of signing by the plenipotentiaries of the two
17 countries, and remain valid for five years, and the
18 signatories shall reach an understanding at a suitable
19 time before the expiration of the period as to the
20 means of subsequent cooperation between the two
21 countries. (Article III)

22 "The protocol attached to this pact provides
23 that the government officials concerned of the two
24 countries shall closely cooperate with each other in
25 exchanging intelligence about the Comintern's activities

1 for defence against the destructive communistic
2 activities of the Communist Internationale (so-
3 called Comintern). The signatory powers agree to
4 exchange information on the activities of the Comin-
5 tern, consult with each other in adopting necessary
6 defensive measures and achieve these defensive measures
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17 countries, and remain valid for five years, and the
18 signatories shall reach an understanding at a suitable
19 time before the expiration of the period as to the
20 means of subsequent cooperation between the two
21 countries. (Article III)

22 "The protocol attached to this pact provides
23 that the government officials concerned of the two
24 countries shall closely cooperate with each other in
25 exchanging intelligence about the Comintern's activities

1 and in effecting educational and defensive measures
2 against the Comintern -- "

3 MR. COMYNS CARR: Your Honor, the whole of
4 this has been read already; I don't mean the whole of
5 the document, but the part my friend is reading now,
6 at page 5957 and onwards.

7 THE PRESIDENT: That means giving the
8 evidence twice. Well, on principle, we can never
9 permit that, Mr. Cunningham. Of course, in your
10 summation, you may refer to this again, but not as
11 evidence.

12 MR. CUNNINGHAM: I just got mixed up on the
13 colors. What was read was blue. I will start at the
14 top of page 1, the part that was not read, which is
15 the explanation before the discussion.

16 THE PRESIDENT: Perhaps you have not made
17 sufficiently sure of your colors yet, and it may save
18 time if we give you that opportunity, Mr. Cunningham.

19 It is nearly twelve o'clock. We will adjourn
20 until half-past one.

21 (Whereupon, at 1200, a recess was
22 taken.)

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NOTE:

The attached pages are corrected pages and should be substituted for the corresponding pages in the record.

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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330, the HONORABLE JUSTICE ROLING, Member from the Netherlands, not sitting.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: Now I will start to read, on the bottom of page 6, the report of the Investigating Committee of the Privy Council on the Anti-Comintern Pact.

"EXPLANATION OF THE PRIME MINISTER (HIROTA) AS TO THE CONCLUSION OF JAPANESE-GERMAN PACT AT THE INVESTIGATION COMMITTEE OF PRIVY COUNCIL.

"As you know, the Union of Soviet Socialist Republics, as a result of strengthening of her national defense and the promotion of her international position in recent years, she has built up huge armaments in the Far East to put heavy armed pressure upon East Asia. On the other hand, it is quite evident that she is acting to put East Asia into disturbance, mobilizing the Communist Internationale. Since these matters are direct menace to our national defense and also they display a very difficult obstacle to the execution of Japan's East Asia policy,

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17 national defense and the promotion of her inter-
18 national position in recent years, she has built up
19 huge armaments in the Far East to put heavy armed
20 pressure upon East Asia. On the other hand, it is
21 quite evident that she is acting to put East Asia
22 into disturbance, mobilizing the Communist Internationale.
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24 defense and also they display a very difficult ob-
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1 and since the former government has insisted on
2 China's cooperation with Japan in eliminating the
3 threat of external Red influence from Outer-Mongolia
4 and others, as one of the three principles of Sino-
5 Japanese negotiations the present government has made
6 it the pivotal point of the foreign policy to frus-
7 trate the Soviet Union's schemes of aggrandizement,
8 especially to dissolve the threat to the national
9 defense of Japan by her huge armaments and to check
10 the advance of Comintern Bolshevization in East Asia.

11 "Also in Europe, Germany has in recent years
12 been placed in a position so similar to Japan's that
13 she must check the advance of Bolshevization and
14 also she is threatened by huge armaments of Soviet
15 Union. Consequently we have found it a good chance
16 to conclude a pact between Japan and Germany who
17 have common interests with respect to those points,
18 with a view of common defense against the destructive
19 activity of the Communist Internationale and check
20 of the armed advance of the Soviet Union.

21 "According to the present pact, as the text
22 elucidates itself, it is clear that the third country
23 can be induced in order to take common defensive
24 measures against the Bolshevistic activities, there-
25

1 fore, Japan's cooperation with Germany for this par-
2 ticular object through this pact in no way whatever
3 implies that Japan fully approves of that country's
4 principles in respect to her internal affairs
5 or that Japan will act in concert with her.

6 "Since the object of the present pact is
7 simply to make it an instrument for preparing for
8 checking the armed pressure of the Soviet Union and
9 Bolshevistic activities, we on our side should of
10 course refrain from taking any positive measures
11 which might aggravate relations with the Soviet
12 Union. As to the demarcation of the boundary line
13 of Japan, Manchukuo and the Soviet Union, the
14 settlement of boundary disputes, and other matters
15 of negotiation between Japan and the Soviet Union,
16 the Government will constantly give its most devoted
17 attention in order to adjust as may be best for the
18 two countries' diplomatic relations.

19 "Moreover, as Japan will cooperate with
20 Germany by the conclusion of this pact, as the govern-
21 ment will always do its utmost to maintain and
22 promote amicable relations between Japan and Britain
23 and the United States, especially cordial relations
24 between Japan and Britain.

25 "I hope you would fully discuss and inves-

1 tigate the draft of this pact.

2 "EXPLANATION OF THE FOREIGN MINISTER
3 (ARITA) AS TO THE CONCLUSION OF JAPANESE-GERMAN
4 PACT AT THE INVESTIGATION COMMITTEE OF PRIVY
5 COUNCIL (NOVEMBER 13, 1936).

6 "I. It is a remarkable fact that in recent
7 years the Soviet Union has not only pushed on with
8 her internal construction in accordance with the so-
9 called Five-Year Plan, but has also zealously com-
10 pleted her national defense, especially in the Far
11 East, she laid extraordinary stress on strengthening
12 armaments. In Europe, the Soviet Union has con-
13 cluded non-aggressive treaties or special treaties
14 such as those defining aggressive nations with various
15 neighboring countries successively and joined the
16 League of Nations too. Especially last year by con-
17 clusion of mutual assistance treaties between the
18 Soviet Union and France and also between the Soviet
19 Union and Czecho-Slovakia, the Soviet Union has
20 promoted her international position in Europe, and
21 consequently with the aggrandizement of armaments in
22 Far East, the pressure exerted by the Soviet Union
23 upon East Asia district is increasing.

24
25 "II. Next, it may be needless to say about

1 the inseparable relations between the Soviet Union
2 and Comintern, and the details of Bolshevist activi-
3 ties of Comintern may be found in the separate proto-
4 col near at hand. To explain a few of the most
5 remarkable examples, at the beginning of the Russian
6 revolution, the Comintern strived to bolshevize
7 various countries of Europe; but finding that the
8 political and economical foundations of various
9 countries of Europe so solid, it has transferred the
10 chief objectives of this activity from Europe to
11 East Asia and since then its invasion has been par-
12 ticularly extended in the areas of Outer Mongolia,
13 Sinkiang and the central part of China. In 1931,
14 Central Government of Chinese Soviet Republics was
15 established in Juichin, Kiangsi Province, and the
16 total number of the Communist Army reached some
17 350,000. Although the Kiangsi Soviet was abandoned
18 when Juichin fell as the result of Chiang Kai-shek's
19 punitive invasion in November 1934, the Communist
20 Army still infects the Chensi, Kanso and Szechwan
21 districts. Not only that, the Comintern, after
22 the 7th World Conference of 1935, has been conducting
23 increasingly vigorous anti-Chinese activities in
24 China, its tactics this time being those of organizing
25 an anti-Japanese popular front through the Chinese

1 Communist Party. In Manchuria, too, despite the
2 strict vigilance on the part of the Japanese and
3 Manchurian government authorities, the Comintern,
4 acting through its subordinate, the Manchuria
5 Commission of the Chinese Communist Party, is doing
6 all it can to Communist cells everywhere and encourage
7 roving gangs of military, and also paying great
8 attention to guerilla movements wherever they may
9 be. The fact that those Red 'Partisan' units are
10 now to be found far and wide, shows that the influence
11 of the Comintern's secret activities in Manchuria
12 is not something to be taken lightly.

13 "As for Europe, the Comintern activity has
14 recently become very pronounced in the popular move-
15 ment in Spain. Judging from the true facts of the
16 present civil war there, it can be proved beyond
17 doubt that the Soviet Union and the Comintern, by
18 their permeation into the internal machinery of
19 other countries, and their skillfully executed Bol-
20 shevist activities there, have caused a profound
21 disturbance to internal tranquility as well as
22 international peace.

23
24 "III. As I have told you just now, the
25 armed intervention by the Soviet Union and the
promotion of the Comintern's Bolshevik activities

1 in the Far East constitute a direct threat to the
2 safety of Japan and Manchuria and also a very diffi-
3 cult obstacle to the execution of Japan's East Asia
4 policy, so we must recognize that a counter measure
5 for them is the most urgent and important question
6 among all the various external problems now con-
7 fronting Japan.

8 "Since such is the present situation, the
9 present Government has made it the pivotal point of
10 its foreign policy to frustrate the Soviet Union's
11 schemes of aggrandizement and to check the advance
12 of Comintern bolshevization in East Asia.

13 "IV. In Germany, however, since the es-
14 tablishment of the Nazi Regime headed by Hitler in
15 1933, a strict anti-Communist policy has been adopted,
16 with the result that German-Soviet relations have
17 suddenly deteriorated. In addition, considerable
18 ill-feeling and uneasiness have been created as the
19 result of the conclusion of these mutual assistance
20 treaties between the Soviet Union and France and also
21 between the Soviet Union and Czecho-Slovakia. It is
22 also a fact that at the Comintern's 7th World Con-
23 gress a resolution was adopted making it the duty
24 of the Communist parties of the whole world to
25 consider both Japan and Germany as their enemies and

1 to organize a common front against the two countries.
2 Her relations with the Soviet Union and the Comin-
3 tern, therefore, have placed Germany in a position
4 so similar to Japan's that she finds it convenient
5 to cooperate with Japan in national defense and anti-
6 Communist policies.

7 "V. The government accordingly planned
8 cooperation with Germany as the first step in execut-
9 ing the foreign policy I have just explained, and
10 in spring of this year when Ambassador MUSHAKOJI
11 returned to his post in Berlin, the government trus-
12 ted him to find the intention of Germany. Thus we
13 have confirmed that Germany also eagerly desired the
14 cooperation with us and as the result of protracted
15 negotiations carried on between the Japanese Am-
16 bassador to Germany and RIBBENTROP of the German
17 Government, two countries arrived at the present
18 draft of agreement. And as RIBBENTROP was expected
19 to go to his post of German Ambassador to Great
20 Britain, let Ambassador MUSHAKOJI and Ambassador
21 RIBBENTROP initial on 23rd ultimo in order to deter-
22 mine the draft before Ambassador RIBBENTROP goes to
23 his post."

24 I will now go to the final paragraph on
25 page 11, sub-division 6:

1 "VI. In conclusion I should like to add
2 a few words. The Japanese Government should of
3 course refrain from taking any positive measure
4 which might aggravate relations with the Soviet
5 Union, and as to the various questions concerning
6 the demarcation of the boundary line of Japan, Man-
7 churia and Soviet Union, the Government will con-
8 tinue the negotiation with the Soviet Union in order
9 to solve the said questions; consequently in the
10 case of negotiation and conclusion of the present
11 Japanese-German Pact, although it has been contrived
12 most effectively to restrain the Soviet Union by the
13 present Pact, the Government has done its utmost not
14 to irritate excessively the Soviet Union side. In
15 other words, in the Articles of the Pact for the
16 Comintern, no words have been used likely to class
17 the Comintern with the Soviet Union, and besides,
18 we have kept the Appendix to the Pact as well as the
19 attached official notes secret. These have been done
20 with the precautions just mentioned.

21 "I hope you would fully discuss and inves-
22 tigate this matter."

23 I now offer to read the omitted parts of
24 the very important minutes of the meeting of the
25 Privy Council, which advised the Emperor before the

1 anti-comintern pact was signed. If there was any
2 unauthorized conduct or negotiations involved in the
3 anti-comintern agreement, surely the consideration
4 of the Privy Council and the ultimate approval by
5 the Emperor wiped it out. For the purpose of showing
6 that the pact was fully considered before it became
7 official, I read from the Privy Council Minutes of
8 the meeting of 25 November 1936. In this regard I
9 refer the Tribunal to the provision in the Privy
10 Council regulations which provides, in Article 6,
11 that "Treaties shall be approved by the Privy Coun-
12 cil."

13 "Matters pertaining to the conclusion of
14 the Agreement between Japan and Germany.

15 "Council opened at 10:15 a. m.," and so forth.

16 "Attended by President HIRANUMA.

17 "Ministers: Prime Minister, HIROTA; Navy
18 Minister, NAGANO.

19 "Commissioners: TOGO. Chief of European-
20 Asiatic Affairs, Bureau of the Foreign Ministry."

21 THE PRESIDENT: Proceed, Mr. Cunningham,
22 please.

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1 anti-comintern pact was signed. If there was any
2 unauthorized conduct or negotiations involved in the
3 anti-comintern agreement, surely the consideration
4 of the Privy Council and the ultimate approval by
5 the Emperor wiped it out. For the purpose of showing
6 that the pact was fully considered before it became
7 official, I read from the Privy Council Minutes of
8 the meeting of 25 November 1936. In this regard I
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10 Council regulations which provides, in Article 6,
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14 the Agreement between Japan and Germany.

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17 "Ministers: Prime Minister, HIROTA; Navy
18 Minister, NAGANO.

19 "Commissioners: TOGO. Chief of European-
20 Asiatic Affairs, Bureau of the Foreign Ministry."

21 THE PRESIDENT: Proceed, Mr. Cunningham,
22 please.
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1 MR. CUNNINGHAM: I read page one to two
2 and the first paragraph on page three for the
3 translators.

4 "Reporter (ARAI)

5 "We have been ordered members of the
6 investigation committee regarding the Imperial
7 consultation on the conclusion of the treaty between
8 Japan and Germany. Having held meetings on the 13th
9 and the 18th of this month, we have strived to make
10 a full investigation into the matter by having listened
11 to detailed explanations from the Minister of Home
12 Affairs and other officials concerned.

13 "According to explanations by the the Minister
14 concerned, the U.S.S.R. , lately, is devoting herself
15 to her internal construction as well as to the com-
16 pletion of her national defense through the first
17 and second five year plans. Expecially, she has put
18 unusual effort in the establishment of enormous
19 military installations in the Far East. On the other
20 hand, she has concluded special treaties such as the
21 non-aggression pact on treaties defining aggressive
22 nations with neighboring countries in Europe and then
23 entered the League of Nations. Last year, she con-
24 cluded a mutual-aid treaty with France and Czech-
25 oslovakia, thereby gradually strengthening her

1 international position in Europe. Following this,
2 she is greatly intensifying her oppression in East
3 Asia. The 'Communist International' (the so-called
4 Comintern) which is inseparably related to the Union
5 of Social Soviet Russia is putting every effort to
6 push forward their operations to communize the whole
7 world. Recently, the object of Communist operations
8 has been turned from Europe to East Asia and their
9 aggressive hands have extended especially to Outer
10 Mongolia, Hsinchiang and China proper. In 1931,
11 a central government of the Chinese Soviet Republic
12 was established in Juichin, Chianghai Province, and
13 the total number of the Communist Army numbered about
14 350,000. However, in November 1934, Jichin was captured
15 in an armed subjugation by Chiang Kai-shek and the
16 Soviet district in Chianghsi was abandoned. Remnants
17 of the Communist Army, however, are still rampant
18 in the district of Shensi, Kansu, and Szechwan.
19 Following the seventh world conference, 'Comintern'
20 is executing with much vigour her activities against
21 China through a new tactic by constructing an anti-
22 Japanese civilian front among the Chinese Communist
23 Party. Also in Manchuria, the Comintern is supervising
24 the Manchurian Committee of the Chinese Communist
25 Party in spite of strict vigilance by both the Japanese

1 and Manchurian police forces. They are striving
2 to establish Communist organizations in various dis-
3 tricts and to encourage various troops and communist
4 bandits, and they are also putting efforts in guerilla
5 activities in various districts. Red partisan
6 troops are, actually, appearing everywhere, and the
7 influence of the underground activities of 'Commintern'
8 in the Far East cannot be lightly overlooked.

9 The 'Commintern' activities are very notable recently
10 in the so-called civilian front movements in Spain.
11 Considering from the truth in the late disturbances
12 in Spain, it is very plainly evident that 'Commintern'
13 is permeating into the domestic organs of the other
14 countries and is skillfully carrying out communist
15 activities to greatly disturb the domestic security
16 and international peace.

17 "The furtherance of Soviet's military
18 oppression and communist operations of Commintern
19 in the Far East, as I have related, is not only a
20 direct menace to the security of both Japan and
21 Manchuria but is also a great obstacle to the execution
22 of Japan's East Asia policy. Therefore, we must
23 acknowledge that the measure to cope with this is
24 the most important and urgent diplomatic problem
25 among those which Japan is now encountering.

1 Accordingly, the main point of Japan's foreign policy
2 will be the frustration of the Soviet's aggressive
3 plans and the prevention of the Red advancement of
4 Comintern. China's cooperation with Japan to exclude
5 the menace of foreign Communist elements, has been
6 mentioned as an article in the Three Fundamental
7 Principles in our negotiations with China. On the
8 other hand we have established measures to strive to
9 realize the above policy by proper diplomacy, in
10 accordance with the completion of national defense.
11 In Germany, following the establishment of the Nazi
12 Regime in 1933 with Hitler as its leader, a strong
13 anti-communist policy has been carried on; which resulted
14 in the sudden deterioration in the German-Soviet
15 relations. Furthermore, the mutual aid treaty
16 concluded by the Soviet Union with France and
17 Czechoslovakia, as I have previously related, gave
18 use to much ill feelings and anxiety. At the 7th
19 Comintern World Conference, Japan and Germany, were
20 specially mentioned as enemies, and there has actually
21 been a resolution to the effect that the construction
22 of a united front against these two powers is the
23 duty of the Communist Parties of the whole world.
24 Therefore, Germany stands in the same position as
25 the Japanese Empire with relation to the Soviet

1 and Comintern and she is in a convenient position
2 to cooperate with Japan in her national defense and
3 anti-Communist policies. The Japanese Government has
4 planned for a coalition with Germany as a first step
5 in executing the above-mentioned foreign policy.
6 As a result of negotiations by the Japanese ambassador
7 in Germany with the representatives of that country
8 since Spring, it was decided to conclude a special
9 treaty between the two powers for this coalition,
10 and this has lead to the conclusion of the present
11 treaty."

12 I now offer in evidence defense document
13 1316, which is an excerpt taken from an interrogation
14 of J. Von Ribbentrop on the 20th of September, 1945
15 at Nuernberg. The interrogator was Colonel Brundage,
16 United States Army. In this interrogation Von
17 Ribbentrop explains that the anti-Comintern Pact
18 was an ideological pact, directed against communism
19 and that Germany tried to get Great Britain to join
20 and that Germany considered the improvement of relations
21 with Great Britain and France was far more important
22 than the establishment of a friendly relation with Japan.

23 MR. COMYNS CARR: Your Honor, no such document
24 has been served upon us. The number on the list is
25 1315.

1 MR. CUNNINGHAM: I will pass that and pick
2 it up at the end of the list. By that time the
3 prosecution will have it and the clerk will have
4 it.

5 I wish the parties concerned would add
6 1316 just before 1317 at the end of the list and it
7 will save making a new order of proof. Also add
8 1420 to the HATANO affidavit to the end of the list,
9 and insert after 1314 and before 1398, 1400 T-2.
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M 1 MR. CUNNINGHAM: I now pass to defense
O 2 document 1315 and ask that the Tribunal take judi-
r 3 cial notice of the public recognition given the
s 4 Anti-Comintern Pact as reported in the official
c 5 document of the United States State Department
& 6 volume entitled "Events Leading up to World War
S 7 Two", and ask that that report at 109 and 110 be
e 8 read into the record as evidence of the notice which
l 9 the world took of the event and of meaning of the
z 10 pact. I offer to read the statement. If judicial
e 11 notice is not taken, I offer defense document 1315
r 12 into evidence.

13 THE PRESIDENT: General Vasiliev.

14 GENERAL VASILIEV: If the Tribunal please,
15 I object to the introduction of this document on two
16 grounds. First, this excerpt corroborates the fact
17 of the conclusion of the Anti-Comintern Pact and
18 nobody questions this fact, and the pact itself is at
19 the disposal of the Tribunal. Therefore, there is no
20 need of such additional corroboration.

21 Two, when the prosecution introduced excerpts
22 from this book entitled "Events Leading up to World
23 War Two", not a single one of these excerpts was
24 received in evidence. When there was a question of
25 taking judicial notice of the facts of common knowledge

1 it was always decided in chambers, and although the
2 excerpts from the book were taken into consideration
3 ~~there~~ always was an element of criticism in their
4 approach to them. Such was the case when, on
5 October 16th, I personally made reference to this
6 book, transcript pages 7892 - 7897. On these two
7 grounds I submit the document should be rejected.

8 THE PRESIDENT: Mr. Cunningham.

9 MR. CUNNINGHAM: I merely wish to state,
10 your Honor, that history records this event in many
11 different ways and all about the same purport and
12 I suggest we shouldn't have to prove the manner in
13 which the world accepted the Anti-Comintern Pact if
14 the Court can take judicial notice of its popular
15 acceptance.

16 THE PRESIDENT: We notice that part of the
17 defense document 1315 is in quotation marks. Whose
18 observations are they; are they the preamble to the
19 pact? Apparently not.

20 MR. CUNNINGHAM: It is from the United States
21 State Department Volume, "Events Leading Up to World
22 War Two", and I copied it out of it, the way it is
23 reported there.

24 THE PRESIDENT: All the sound and all the
25 crazy statements in the world could appear in the

1 publication of any nation. Who is responsible for
2 this?

3 MR. CUMMINGHAM: I found the volume pretty
4 reliable and I don't know the author of the statement.

5 THE PRESIDENT: The Tribunal upholds the
6 objection and rejects the document.

7 MR. CUNNINGHAM: The next document is a
8 little hearsay evidence recorded in Grew's book which
9 showed that the Anti-Comintern Pact, that the secret
10 agreement which accompanied the Anti-Comintern Pact,
11 was in fact common knowledge. I offer in evidence
12 defense document 206-C(4).

13 THE PRESIDENT: General Vasiliev.

14 GENERAL VASILIEV: I object to this document
15 on two grounds, if the Tribunal please. First, the
16 book by Mr. Grew in general shouldn't be considered
17 as having any probative value. As far as I can
18 remember the Tribunal rarely made an exception con-
19 cerning this and only in cases when this or that
20 excerpt was in the nature of a diary extract which
21 described the evidence fully and truly.

22 In the present case the fact is described
23 very insufficiently. It is not known what official
24 of what embassy said the things which are written
25 there. Besides, these words are mere suggestions

1 on the part of this unknown official. Therefore,
2 this excerpt has no probative value.

3 Second, this excerpt will be of no
4 assistance because the Tribunal already have the
5 agreement attached to the Anti-Comintern Pact. No
6 other confirmation of this excerpt of this fact is
7 needed.

8 MR. CUNNINGHAM: I think these two lines
9 have been sufficiently recommended, your Honor.

10 THE PRESIDENT: By a majority, the Court
11 upholds the objection and rejects the document.

12 MR. CUNNINGHAM: Defense document 1426 is
13 one of a series of telegrams of Ambassador SUGIMURA
14 addressed to Foreign Minister ARITA just prior to the
15 signing of the Anti-Comintern Pact. This document
16 reports the conversations and policy of the Italian
17 Foreign Minister Ciano, whose diary has been dis-
18 cussed at length in this trial. This document shows
19 some of the considerations which prompted Italy to
20 sign the pact. It is both relevant and enlightening
21 on the question of interpretation to be placed on
22 the pact and the secret agreement. We offer defense
23 document 1426.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Defense document 1426

1 will receive Exhibit #2615.

2 (Whereupon, the document above referred
3 to was marked defense exhibit No. 2615 and
4 received in evidence.)

5 MR. CUNNINGHAM: I now read defense exhibit
6 2615. (Reading:)

7 "On the occasion of the interview with
8 Ciano reported in my previous telegram No. 187.

9 "(1) the Italian Foreign Minister con-
10 fessed that Italy formerly used to decide her policy
11 towards the Soviet Union from the viewpoint that the
12 Soviet Union and the Comintern were different things,
13 though she later came to realize that such was a
14 wrong idea. Then he made it clear that he had always
15 kept a decisive attitude towards the Soviet Union
16 ever since he was appointed Foreign Minister, and
17 revealed that Germany agreed with Italy in that
18 point, referring to the fact that he had already
19 reached an agreement with Hitler as he had told me
20 before (viz. telegram No. 177).

21 "(2) He again alluded to the rumour of the
22 conclusion of a Japanese-German pact against the
23 Soviet Union, and suggested that it was considered a
24 natural process to conclude a similar pact between
25 Japan and Italy.

1 "I asserted, in response to his suggestion,
2 that Japan would not grudge due co-operation with
3 any nation in precluding the Red movement of the
4 Soviet Union, and explained that I did not think the
5 pact, if there was a pact actually concluded, was of
6 military nature. Then alluding to the mutual under-
7 standing of Germany and Italy which seemed consider-
8 ably deep, I revealed my view that the understanding
9 between Japan and Germany was not yet in so advanced
10 a state, as that between Germany and Italy deduced
11 from their agreement as to the Spain question for in-
12 stance. And, in conclusion, I laid our desire before
13 him to limit the scope of deliberation for the pres-
14 ent to the problem of opening Japanese and Italian
15 consulates in Ethiopia and in Manchuria respectively,
16 and leave the matters which the Italian Foreign
17 Minister suggested to be dealt with some other day.

18 "(3) As to the anti-Comintern question, it
19 is believed to be worth consideration to exchange
20 information between the police authorities of the
21 two countries and to maintain necessary connection
22 among the military and naval officers of the respec-
23 tive countries stationed in the countries adjoining
24 the Soviet Union."
25

1 We now offer defense document 1427 which is
2 another in a series of telegrams from Rome to Tokyo to
3 show that the anti-comintern pact was not a secret
4 society of nations. This also shows that the informa-
5 tion concerning it will be handled through regular
6 diplomatic channels.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Defense document No. 1427
9 will receive exhibit No. 2616.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 2616 and received in evidence.)

13 MR. CUNNINGHAM: (Reading)

14 "Telegram of Ambassador SUGIMURA addressed
15 to Foreign Minister ARITA, Dated November 28, 1936,
16 arriving at the Japanese Foreign Office on 29.

17 "Both Italian Premier and the Foreign Minister
18 expressed their hearty congratulation on the conclusion
19 of the Japanese-German Anti-Comintern Pact when I had
20 a conversation with them on November 26. Further they
21 revealed their desire to form a like pact between
22 Japan and Italy referring to the Japanese intention to
23 co-operate with any other nation in their joint defence
24 against the Comintern menace. (It is likely that Italy
25 desires to conclude a pact with Japan independently of

the Japanese-German Anti-Comintern Pact.)

1 "I answered to their suggestion that I would
2 convey their wishes to the Japanese Government, though
3 I considered it proper to deal with the question after
4 we settled the legation question (vid. previous tele-
5 gram) completely."

6 Defense document 1424 is introduced for the
7 purpose of showing that the Dutch Government was con-
8 sidering seriously joining the anti-comintern pact or
9 making some sort of an agreement to accomplish the same
10 object. This is an official document of the Japanese
11 Foreign Office which negatives any illegal intention
12 of the pact and tends to establish its wholesome purpose.

13 THE PRESIDENT: General Vasiliev.

14 GENERAL VASILIEV: If the Tribunal please,
15 I object to the introduction of this document, first
16 of all because it has no relevancy to the issues in-
17 volved in this case. The document speaks about the
18 refusal of the Netherlands to join the anti-comintern
19 pact. It is hard to understand in what way it could
20 render any assistance to this Tribunal. Besides, this
21 document has no probative value. This Japanese publica-
22 tion gives information for home use only and the source
23 of the information is not given. If it would have been
24 really necessary to prove the refusal on the part of
25 the Netherlands, or any other state, it is obvious the

1 best way to do it would have been to submit the refusal
2 itself.

3 THE PRESIDENT: Mr. Cunningham.

4 MR. CUNNINGHAM: Your Honor, I note that this
5 is an official document, "The Annual Report of the
6 Official Business for the year 1936," and it is not
7 for public -- was not for publication but was a
8 confidential document of the Foreign Office on a matter
9 which was vital to the Japanese Government at that
10 particular time. And as far as for publication, all
11 this material was kept pretty secret from the rest of
12 the world, at least for a long, long time. The charge
13 of propaganda certainly cannot be applied to this docu-
14 ment, and it indicates that there was no conspiracy
15 between nations, that all the nations of the world were
16 invited to join the anti-comintern pact if they wished,
17 with the exception of Soviet Russia, of course.

18 THE PRESIDENT: By a majority the Court up-
19 holds the objection and rejects the document.

20 MR. CUNNINGHAM: Your Honor, I should be most
21 indebted to learn the reason why a document like this
22 could be rejected, because if it is probative value it
23 seems to me that is something that has to be determined
24 at the end of the case. And if it is for technical
25 reasons, it seems as though we should be advised what

1 the technical reason is and we should be given an
2 opportunity to overcome it.

3 THE PRESIDENT: Most frequently, if not invariably,
4 different Members have different reasons for accepting
5 or rejecting any document.

6 MR. CUNNINGHAM: Then I suggest, your Honor,
7 that the Members of the Tribunal should enlighten us
8 when an objection is sustained by telling us on what
9 grounds it is sustained in order that we can meet the
10 conditions, or that a commission of the Court be
11 appointed to eliminate from the record of this case
12 all the evidence of the prosecution which fit into
13 this category and to give us an indication.

14 THE PRESIDENT: As you know, even in national
15 courts decisions on questions of evidence are not
16 accompanied by reasons as a rule, although some judges
17 may see fit to give them on very important matters.
18 I cannot help you any further, Mr. Cunningham. I have
19 told you the position.

20 MR. CUNNINGHAM: Well, I am interested very
21 much in finding out if there is a different obligation
22 on the Court in passing upon the admissibility of
23 evidence on the defense's case than there was on the
24 prosecution's case.

25 THE PRESIDENT: There is no reason whatever

1 why you should suggest that the prosecution were treated
2 different from the defense in this matter. You know
3 they were not treated differently. This cannot be
4 intended for our ears alone.

5 MR. CUNNINGHAM: Well, your Honor, I hate to
6 be put into that position of where I am accused of some-
7 thing like that, because to me all a person has to do
8 is read the record and to see that from fifty to one
9 hundred and fifty times the Court has said repeatedly,
10 "We must accept this evidence for whatever probative
11 value it has." Now that was the prosecution's case.

12 THE PRESIDENT: That, as I said this morning,
13 is always the test. If it would help you for me to
14 say occasionally, "We will accept this for whatever
15 probative value it has," well, I feel inclined to meet
16 you. But what help would it give you? This morning
17 and this afternoon we accepted some documents from you.
18 We accepted them for whatever probative value they have.

19 MR. CUNNINGHAM: In answer to that, your
20 Honor, I remember very distinctly you saying on many
21 occasions that, "It is impossible for this Tribunal
22 to pass upon each individual document and determine
23 its probative value when it is offered." That, "We
24 as a Court, eleven judges, must look at the evidence
25 all together and at the end of the case consider it

1 document by document as to what probative value it has."

2 And it is inconceivable ---

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1 THE PRESIDENT: To have probative value, a
2 document must necessarily be relevant and it must be
3 material. All evidence admitted here must comply with
4 those two things. But the exact amount of probative
5 value that any particular document has is a matter to
6 be determined when we come to give our verdicts later
7 on.

8 I cannot say any more to help you, Mr.
9 Cunningham. I have said the most that any court could
10 say to help you.

11 MR. CUNNINGHAM: I might suggest something that
12 I have suggested before, that when one Member of this
13 Tribunal feels that a document has probative value,
14 that should be the test of whether or not that document
15 is received into evidence, because that raises a
16 reasonable doubt in the mind of anyone upon the ques-
17 tion of the value of a document.

18 THE PRESIDENT: I think you are taking
19 advantage of the fact -- no other defense counsel has
20 taken advantage of the fact -- that we can do nothing
21 to you beyond refusing to hear you in this case.
22 We have no disciplinary powers over you beyond that.
23 You are distinctly out of order; as an experienced
24 counsel you must know that. It seems you are
25 deliberately trying to provoke me. But you won't

1 succeed. This international Tribunal to a greater
2 extent than any other tribunal must rely on the
3 innate decency of counsel appearing before it.

4 Please proceed with the case. We have heard
5 enough about this particular document and the Court's
6 reasons for rejecting it.

7 MR. CUNNINGHAM: I would like now to call
8 attention of the Court to the exhibit No. 2371, of
9 December 26, 1936, the statement of the Foreign Office
10 regarding the Anti-Comintern Pact, in which the
11 Japanese Government explained the purpose and the
12 nature of the said pact.

13 The document has already been introduced
14 and read into evidence.

15 THE PRESIDENT: Did you say this is already
16 in evidence?

17 MR. CUNNINGHAM: Yes. It is exhibit 2371.
18 But it was not introduced for this purpose at that time.

19 THE PRESIDENT: Well, we do not want the
20 evidence twice if it is already in evidence. You may
21 refer to it again, of course, but we don't want it twice.

22 MR. CUNNINGHAM: I don't propose to read it.
23 I merely call attention to it as it pertains to this
24 specific subject.

25 Next, I would like to call the Court's

1 attention to exhibit 2370, the address of Mr. ARITA,
2 Minister of Foreign Affairs, at the 70th Session of
3 the Diet on the 21st of January, 1937, in which
4 Mr. ARITA explained the purpose and aim of the Anti-
5 Comintern Pact.

6 I might suggest that these speeches before
7 the Diet, and so on, covered many subjects and we read
8 them all at once in order to prevent reading them
9 parcel by parcel and bit by bit in order to accomplish
10 the continuity of thought.

11 Defense document 1415 is offered to show the
12 attitude of the Foreign Minister HAYASHI in the cabinet
13 on the 24th of February, 1937.
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1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. CUNNINGHAM: (Continuing) For the purpose
3 of showing that the non-accused and the accused leaders
4 of Japan were thinking and acting on parallel lines
5 in relation to the communist activities. It is to be
6 noted that some of the accused were in public office
7 at the time this governmental policy was announced.

8 MR. COMYNS CARR: Your Honor, in our submission,
9 this document can be of no assistance to the Tribunal. It
10 merely repeats in the mouth of this particular speaker
11 who is not an accused what had been said in the previous
12 speech by ARITA who also is not an accused. It's mere
13 generalities, and in our submission is a waste of the
14 time of the Tribunal.

15 MR. CUNNINGHAM: It merely suggests the absence
16 of any conspiracy among the governmental leaders of
17 Japan in accomplishing this policy of Japan on the
18 anti-comintern question.

19 THE PRESIDENT: By a majority, the Court upholds
20 the objection and rejects the document.

21 MR. CUNNINGHAM: I now offer defense document
22 1310, which is a report from the German Ambassador in
23 Tokyo, von Dirksen, to the German Foreign Office in Ber-
24 lin, dated 24 March 1937, concerning a conversation with
25 the Japanese Foreign Minister, SATO.

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. CUNNINGHAM: (Continuing) For the purpose
3 of showing that the non-accused and the accused leaders
4 of Japan were thinking and acting on parallel lines
5 in relation to the communist activities. It is to be
6 noted that some of the accused were in public office
7 at the time this governmental policy was announced.

8 MR. COMYNS CARR: Your Honor, in our submission,
9 this document can be of no assistance to the Tribunal. It
10 merely repeats in the mouth of this particular speaker
11 who is not an accused what had been said in the previous
12 speech by ARITA who also is not an accused. It's mere
13 generalities, and in our submission is a waste of the
14 time of the Tribunal.

15 MR. CUNNINGHAM: It merely suggests the absence
16 of any conspiracy among the governmental leaders of
17 Japan in accomplishing this policy of Japan on the
18 anti-comintern question.

19 THE PRESIDENT: By a majority, the Court upholds
20 the objection and rejects the document.

21 MR. CUNNINGHAM: I now offer defense document
22 1310, which is a report from the German Ambassador in
23 Tokyo, von Dirksen, to the German Foreign Office in Ber-
24 lin, dated 24 March 1937, concerning a conversation with
25 the Japanese Foreign Minister, SATO.

1 This is a German document. It will be shown
2 by this document that the Anti-Comintern Pact was con-
3 sidered as a purely ideological defensive pact necessi-
4 tated by the existence and activities of the comintern.

5 2. Japan wanted the improvement of the relations
6 with U.S.S.R. despite the Anti-Comintern Pact.

7 3. Japan made the understanding with Great
8 Britain the foremost aim of her foreign policy.

9 4. Japan wanted an understanding with China, and

10 5. Germany agreed to these policies (3 and 4)
11 of Japan.

12 THE PRESIDENT: Mr. Comyns Carr.

13 MR. COMYNS CARR: Your Honor, the prosecution
14 objects to this document as irrelevant. It shows at
15 considerable length that the new foreign minister in
16 the HAYASHI Cabinet, no member of which is amongst the
17 accused, disapproved of the Anti-Comintern Pact executed
18 by his predecessor, and said so. That is in our view
19 very much to his credit, but irrelevant to this inquiry.
20 The result was that the German ambassador called on him
21 to protest and they had an argument about it. In our
22 submission this exchange of opinions between those two
23 individuals, neither of whom is before the Court, cannot
24 help the Tribunal.

25 MR. CUNNINGHAM: Well, your Honors, for some

NOTE:

The attached pages are corrected pages and should be substituted for the corresponding pages in the record.

1 time I thought perhaps this cabinet and other members
2 were parties to this phantom group known as "divers
3 other persons." But if that is not the position, if
4 these defendants or accused are not held responsible
5 in any way for anything except what they did themselves,
6 and are not responsible for the continuity of the
7 policy of the Japanese Government, then we are pleased
8 to be informed about that.

9 MR. CONYNS CARR: My friend mustn't misunder-
10 stand me. My remark was confined to this particular
11 speech of the foreign minister -- of the then foreign
12 minister.

13 THE PRESIDENT: By a majority, the Court over-
14 rules the objection and admits the document.

15 CLERK OF THE COURT: Defense document 1310
16 will receive exhibit No. 2617.

17 (Whereupon, the document above re-
18 ferred to was marked defense exhibit No. 2617 and
19 received in evidence.)

20 THE PRESIDENT: We will recess for fifteen
21 minutes.

22 (Whereupon, at 1445, a recess was
23 taken until 1500, after which the proceedings
24 were resumed as follows, the HONORABLE JUSTICE
25 BERNARD, Member from the Republic of France, not
sitting.)

1 time I thought perhaps this cabinet and other members
2 were parties to this phantom group known as "divers
3 other persons." But if that is not the position, if
4 these defendants or accused are not held responsible
5 in any way for anything except what they did themselves,
6 and are not responsible for the continuity of the
7 policy of the Japanese Government, then we are pleased
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19 and received in evidence.)

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21 minutes.

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23 taken until 1500, after which the proceedings
24 were resumed as follows:)
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2 were parties to this phantom group known as "divers
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4 these defendants or accused are not held responsible
5 in any way for anything except what they did themselves,
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21 minutes.

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23 taken until 1500, after which the proceedings
24 were resumed as follows:)
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1 THE PRESIDENT: We hope it will not be
2 necessary to read all this, Mr. Cunningham.

3 MR. CUNNINGHAM: This document only per-
4 tains, I guess, to the anti-Comintern Pact and I
5 think it contains the complete thought of an inter-
6 view on the question.

7 THE PRESIDENT: Read away.

8 MR. CUNNINGHAM (Reading):

9 "Conversation with Foreign Minister SATO
10 on the Anti-Comintern Pact. Political Report --
11 Confidential.

12 "The summary of Foreign Minister SATO's
13 speech published in English and American newspapers in
14 Japan gives us an impression that he regards the
15 German-Japanese Pact as an unavoidable evil, or at
16 best as an agreement necessitated or technical and
17 police purposes in view of the existence of the
18 Comintern. This unfavorable impression is deepened by
19 a perusal of the shorthand record of his speech. Pre-
20 cisely analyzed, his way of thinking as revealed in
21 his speech might even lead us to the conclusion, as
22 is he hypothesized that no such pact existed and, on
23 this basis, intended to endeavor to arrive at an
24 understanding with the Soviet Union.

25 "In order to forestall any such tendencies

1 in time, I deemed it proper to call on the Minister
2 and exchange views with him, in a friendly yet un-
3 equivocal manner, on these parts of his speech, which
4 related to the Anti-Comintern Pact, and at the same
5 time, to call his attention generally to the extremely
6 unsatisfactory treatment of the agreement by newspapers
7 and by the Diet. I thought it important to make clear
8 at the beginning that I called on him on my own initiative
9 and not on the instructions of my government. I then
10 asserted that the official and responsible circles in
11 Japan, as well as the people at large had given approval
12 to the Pact and that the public opinion in Japan had
13 been according the Pact an increasingly strong support.
14 I expressed my regret that the attacks on the Pact in
15 the press and the Diet, which were fairly violent in
16 some parts and which were due principally to the internal
17 political implications, had impressed foreign countries
18 as if not only this Pact itself, but also the pro-
19 German policy in general had been disapproved of by
20 the political circles at large of Japan. An over-
21 estimation of the circles in question could give rise
22 in Europe to an opinion, as if Japan were going to
23 denounce the Anti-Comintern Pact. This opinion have
24 gained possibly still more ground through the parliamen-
25 tary debates, in the course of which various

1 interpellators, in particular the strongly liberal
2 and independant representative OZAKI, had expressed
3 more or less openly their opposition to that Pact.
4 To all these attacks, I told him, the Government had
5 answered only with the sober confirmation of Premier
6 HAYASHI, that he upheld what the Pact and its political
7 aims stood for. Next I pointed out to the Foreign
8 Minister that at the time of his ministerial inaugura-
9 tion, the Japanese public opinion revealed not a
10 little concern, as to the future destiny of the Pact
11 inasmuch as the press, especially the French press,
12 had spread a false conception as if he had disapproved
13 of the existence of that Pact. To support my state-
14 ment, I handed to SATO an excerpt from the 'Japan
15 Chronicle' concerning an interview, allegedly given
16 by the Foreign Minister to French journalist Lachin
17 for the magazine 'Anous la liberte', in the course
18 of which the Minister was said to have declared that
19 he had from the beginning been opposed the conclusion
20 of the Pact.
21

22 "Then I proceeded to discuss in details of
23 SATO's parliamentary speech. I explained to the
24 Foreign Minister that his speech in no way served to
25 rectify substantially the above mentioned opinion,
theretofore prevalent, as to his negative attitude

1 towards the Pact. He gave a very narrow and limited
2 interpretation to the Pact by ascribing its raison
3 d'etre exclusively to the existence and activities
4 of the Comintern and thereby declaring that from
5 the standpoint of the Russo-Japanese relationship
6 it had to be regarded as 'an unhappy and regrettable
7 event.' When he added, by way of a conditional
8 remark, that the Japanese Government, despite the
9 existence of the Comintern, would endeavor to improve
10 the relations between the two peoples, in many re-
11 spects congenial, and whenever possible to re-
12 establish between Japan and Russia the sincerely
13 cordial relations that had lasted for 12 years, he
14 naturally gave rise to an impression that he main-
15 tained towards the Pact a predominantly negative
16 attitude and that he had chosen as his political
17 objective the realization of more or less close re-
18 lationship with the Soviet Union. From the very fact
19 that he did not speak a single word about the relation-
20 ship with Germany, it was easy to infer that he did
21 not hold this relationship in any high estimation. I
22 went on to say that as for myself, however, I was
23 naturally convinced that all these presumptions were
24 unfounded, for the Foreign Minister himself confirmed
25 in our first interview that he would support the Pact

1 wholeheartedly. Nevertheless it was truly desirable
2 that the world opinion also, and especially the
3 German public opinion, be enlightened as to the false
4 suppositions caused by parliamentary speeches and de-
5 bates, for even though the German newspapers had not
6 published the Japanese attacks on the Pact, the
7 political circles in Germany had nevertheless been
8 not a little surprised at the development of such a
9 phenomenon. For instance, General Goring had in
10 December last year lodged a protest with General
11 OSHIMA against the attitude of the Japanese press. I
12 expressed my opinion that it would therefore be greatly
13 effective if the Foreign Minister by way of an inter-
14 view with DAB or VB correspondents in Japan, would
15 speak a few words directly to Germany, in order to
16 disperse the suspicion prevalent in Germany, and at
17 the same time to crash the hopes and speculations of
18 our antagonists.

19
20 "In answer to this, Mr. SATO stated as follows:

21 "1) With regard to his alleged interview
22 with the French journalist Lachin, published in a Paris
23 magazine, he himself seemed very much surprised. The
24 conversation appearing in the excerpt from the Chronicle
25 had been held long before his departure from Paris. He
had not given Lachin any 'interview', but had merely

1 wholeheartedly. Nevertheless it was truly desirable
2 that the world opinion also, and especially the
3 German public opinion, be enlightened as to the false
4 suppositions caused by parliamentary speeches and de-
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22 with the French journalist Lachin, published in a Paris
23 magazine, he himself seemed very much surprised. The
24 conversation appearing in the excerpt from the Chronicle
25 had been held long before his departure from Paris. He
had not given Lachin any 'interview', but had merely

1 talked with him in a friendly manner. Lachin had
2 published this conversation in an entirely rehashed
3 form.

4 "Concerning his attitude towards the Anti-
5 Comintern Pact, he referred me what he had stated in
6 our first conversation. As he explained to me at that
7 time, he was not informed until very late of the
8 negotiations which had been in progress in the prev-
9 ious year; strictly speaking, not until the cabinet
10 council in Tokyo had already given its approval to the
11 Pact.

12 "Since Japan was then on extremely bad
13 terms with Britain and again, was not on particularly
14 agreeable terms with the United States, he doubted
15 the timeliness of the Pact. Circumstances being such,
16 he feared that the Pact would aggravate further the
17 diplomatic difficulties Japan had already been confronted
18 with. He himself had always supported wholeheartedly
19 the maintenance of friendly relations with Germany and
20 with him the idea of fighting the Comintern was person-
21 ally entertained. He had indeed made effort towards
22 this direction already in the year of 1922 when Japan
23 negotiated with the Bolsheviks in Geneva.

24 "With regard to his attitude, towards the
25 Pact in the Diet, he said that it was not so negative

1 as I had described it. He positively supported the
2 Pact in the course of debate held by the Budget Com-
3 mittee of the House of Peers and especially in answer
4 to Viscount of OKOCHI's interpellation, he emphatic-
5 ally supported the Pact.

6 "In subsequent meetings when he discussed
7 in detail the question of the Russo-Japanese relation-
8 ship, he naturally had to take into consideration the
9 fact that the Anti-Comintern Pact had strained the
10 Russo-Japanese relationship and had rendered impossible
11 the signature of the fishery agreement. This gave
12 rise to strong feeling of unrest in the public opinion
13 in Japan.

14 "He thought it highly regrettable if in
15 Germany a false impression had really been created as
16 to his attitude towards the Pact. So, he promised me
17 to take into consideration, in compliance with my
18 views, the advisability of addressing to the German
19 public of an appropriate opportunity.

20 "2) Entering into the general question of
21 the Japanese foreign policy, the Minister added that
22 he might as well inform me at this moment that his
23 task in the immediate future lay in the establishment
24 of a better relationship with Britain. In the relation-
25 ship between the two, the unfavorable economic

1 considerations as above-mentioned had been playing a
2 great part. Japanese exports had been confronted
3 with great difficulties in the third power markets.
4 In every respect it was imperative for Japan to
5 arrive at an understanding with Britain. Therefore,
6 if in future he referred to Britain alone, without
7 mentioning the Japanese-German relationship, it would
8 by no means be due to any disregard of the relation-
9 ship with Germany, which relationship being really
10 secured, but would be due merely to a desire for
11 the necessary lightening of burden of the Japanese
12 foreign policy.

13 "The Minister went on to say that he would
14 endeavor to achieve an amicable settlement also with
15 China. Although some influential political circles
16 in Japan are desirous of keeping China or at least
17 North China, in Japanese monopoly, so to speak, he
18 does not share this desire. It is his belief that
19 China should be left open to all powers.

20
21 "3) I assured the Minister that the German
22 Government fully appreciated Japan's desire to achieve
23 an amicable settlement with Britain and China and that
24 such efforts were in perfect conformity with the German
25 policy. Inasmuch as Germany on her part was also seek-
ing to establish friendly relationship with England,

1 it would be much to her pleasure if our friend Japan
2 succeeded in mitigating the strain between Britain
3 and herself.

4 "Likewise Germany would heartily welcome
5 realization of Sino-Japanese friendly relationship,
6 because in addition to the very friendly relationship
7 with Japan, Germany desired to maintain also with
8 China agreeable relationship based upon various
9 German interests in China.

10 "4) Ultimately the Minister SATO said that
11 he thought any further aggravation of Japan's relation-
12 ship with the Soviet Union undesirable, because the
13 overall situation of Japan was still too uncertain
14 for Japan to stand such aggravation. Manchuria had
15 been consolidated but little and still required an
16 investment on a large scale.

17 "Concerning the attitudes of various polit-
18 ical factors in Japan towards the Pact, I have set
19 forth my opinion in my report of 14 March 1937 - J.
20 No. 448/37 on the establishment of the German-Japanese
21 commission in Tokyo. In conclusion I could sum up as
22 follows:
23

24 "The Pact stands upon a sound basis and is
25 approved of by influential political circles, especial-
ly by the army. In the face of this fact, the lukewarm

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2 succeeded in mitigating the strain between Britain
3 and herself.

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14 for Japan to stand such aggravation. Manchuria had
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18 ical factors in Japan towards the Pact, I have set
19 forth my opinion in my report of 14 March 1937 - J.
20 No. 448/37 on the establishment of the German-Japanese
21 commission in Tokyo. In conclusion I could sum up as
22 follows:
23

24 "The Pact stands upon a sound basis and is
25 approved of by influential political circles, especial-
ly by the army. In the face of this fact, the lukewarm

1 attitude of the new Foreign Minister which, however,
2 had been rectified immediately, is of no decisive
3 importance.

4 "Nevertheless, in order to forestall at the
5 very beginning any attempt likely to impress the
6 public opinion and especially the third powers as if
7 the Pact were unimportant or as if it were to lose
8 its significance by and by, I believed it not only
9 proper but also necessary to hold this conversation.
10 I felt that this objective has been, so far as it is
11 possible, achieved. I have also received an impres-
12 sion that in his public speeches in the future Mr. SATO
13 will pay more attention to Japan's relationship with
14 Germany. The German Embassy in Nanking has safely
15 received a copy of this report.

16 "(Signed) Von Dirksen," whom, I might
17 suggest, was later the German ambassador to Great
18 Britain.

19
20 Defense document 1428 is another in a
21 series of telegrams from Ambassador SUGIMURA in Rome
22 to Foreign Minister SATO in Tokyo in which the Ambassa-
23 dor conveyed the desire of the Italian government to
24 conclude an anti-comintern pact with Japan, but advised
25 not to accept the Italian proposal in consideration of
its effect on the British attitude.

THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Defense document 1428
2 will receive exhibit No. 2618.

3 (Whereupon, the document above
4 referred to was marked defense exhibit
5 No. 2618 and received in evidence.)
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1 MR. CUNNINGHAM (Reading):

2 "Telegram Despatched by Ambassador
3 SUGIMURA and Addressed to Foreign Minister SATO,
4 Dated May 25, 1937, Arriving at the Japanese
5 Foreign Office on May 26 - No. 89.

6 "(1) On receiving your telegram No. 109
7 which was despatched in answer to my telegram
8 report No. 194 of last December, I conveyed the
9 import of your instructions to Italian Foreign
10 Minister Ciano. He, on that occasion, pointed out
11 the second article of the Japanese-German Anti-
12 Comintern Pact, and talked suspiciously of Japan's
13 attitudes.

14 "I explained, in reply, that there was
15 no urgent need of concluding a Japanese-Italian
16 anti-Comintern pact, and that, in consideration of
17 the present friendly relations between Japan and
18 Italy, necessary cooperation can be obtained even
19 if there be no written pact, which could be con-
20 cluded at any time if necessary. Further I sug-
21 gested, in order to appease him, that it is right
22 and proper to accomplish, before everything, the
23 work of cultural exchange, then form some economi-
24 cal convention between Japan and Italy and lastly
25 proceed to the conclusion of a political pact.

1 "From that time onward, I cautiously a-
2 voided to commit myself to it, making suitable
3 answers from the viewpoint I expressed in my
4 telegram messages Nos. 55 and 63 respectively
5 whenever the Italian Foreign Ministry intermit-
6 tently referred to the problem in question.

7 "(2) For all that, Ciano made an address
8 at the Parliament on May 13 to the effect that
9 Japan and Italy stand on a common standpoint in
10 defending themselves against the menace of the
11 Comintern. An address to the same effect was
12 again repeated that evening on the occasion of
13 the farewell dinner given in my honour under the
14 auspices of the Italian Foreign Minister.

15 "After the dinner, Ciano revealed to me
16 the desire on the part of Italy to conclude an
17 anti-Comintern pact with Japan. He said he had
18 been persuading himself to abstain from proposing
19 to conclude an anti-Comintern pact with Japan
20 because he trusted me, and that it was desirable
21 to make the understanding clear in written form
22 on the occasion of my leaving Rome. He added
23 further that he considered it was high time to
24 conclude a political pact since the work of
25 cultural exchange was proceeding smoothly and the

1 commercial convention, too, was on the threshold
2 of being concluded.

3 "I avoided to give an immediate answer
4 and put an end to the conversation with a remark
5 to ask for time to deliberate on the matter.

6 "(3) The pivot of the anti-Comintern
7 activity, in my own conceit, is the Japanese-German
8 Pact. The Japanese-Italian cooperation is simply
9 of complementary nature.

10 "To deliberate on the expected effect of
11 the Japanese-Italian cooperation, it is chiefly
12 when we deal with the Soviet Union that Italy's
13 cooperation is expected to be of some use from our
14 standpoint, enabling us, for instance, to demand
15 Italy to stop to provide the Soviet Union with arms.
16

17 "As for Italy, she is possibly taking the
18 solidarity against Britain into account, besides
19 that against the Soviet Union. Granting that Italy
20 actually has no intention to make the most of the
21 anti-Comintern pact in carrying out her policy
22 towards Britain, the realization of closer relations
23 between Japan and Italy would stimulate Britain all
24 the same, just as it was the case with the Japanese-
25 German Pact. The point is how to find out a way to
attain our purpose, with such secondary effect

1 checked within the least extent.

2 "(4) I hear that Japan and Britain are
3 now in negotiation, with the object of readjusting
4 their mutual interests. It goes without saying
5 then that the rapprochement between Japan and
6 Italy must not stand in the way of the Anglo-
7 Japanese negotiation.

8 "Moreover, Italy is prone to turn her
9 coat, though she has become a little trustworthy
10 since Mussolini held the reins of power. In view
11 of this danger, I hesitate to conclude a strict
12 engagement with Italy. The friendly relations with
13 Italy should not be cultivated through such incon-
14 venient form as a written pact, but it is considered
15 proper to seek them through freer, more elastic
16 everyday diplomatic efforts. That is to say, the
17 cooperation of Italy ought to be sought when the
18 interests of the both nations agree, through the
19 mutual contact of the Japanese Ambassador and the
20 Italian Premier or Foreign Minister.

21 "Therefore, it is my advice that you
22 should let the new Ambassador to Italy take your
23 letter, addressed to the Italian Foreign Minister,
24 to celebrate the improvement of the friendly re-
25 lations between Japan and Italy, point out the

common standpoint on which the two nations stand,
and further, if possible, tell him that Japan has
a desire or intention to cooperate with Italy when
necessary in the future. (I mean by 'cooperate'
here to cooperate on principle, and not to cooperate
for police or military purpose. It would be quite
necessary, when negotiations are opened for more
substantial cooperation, to make searching inquiries
in Italy's political relations with the League of
Nations, the Soviet Union, Germany, Britain and
France, respectively.) With this as a start, it
is considered proper the new Ambassador should
negotiate directly with the Italian Foreign
Minister in a similar way as I have taken.

"In short, it is my belief that the time
is not yet ripe for the conclusion of a Japanese-
Italian pact or for the publication of a Japanese-
Italian joint statement concerning the anti-Comintern
question. However, Italy's attitudes being as re-
ported above, my leaving the post without making
any reply to her proposal would disappoint her and
cause her misunderstand Japan's motives. The special
favor shown by the Italian airforce to me towards
Japan, for instance, could no longer be expected on
this occasion. Moreover, it is feared that Japan's

common standpoint on which the two nations stand,
 1 and further, if possible, tell him that Japan has
 2 a desire or intention to cooperate with Italy when
 3 necessary in the future. (I mean by 'cooperate'
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 9 Nations, the Soviet Union, Germany, Britain and
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 13 Minister in a similar way as I have taken.
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15 "In short, it is my belief that the time
 16 is not yet ripe for the conclusion of a Japanese-
 17 Italian pact or for the publication of a Japanese-
 18 Italian joint statement concerning the anti-Comintern
 19 question. However, Italy's attitudes being as re-
 20 ported above, my leaving the post without making
 21 any reply to her proposal would disappoint her and
 22 cause her misunderstand Japan's motives. The special
 23 favour shown by the Italian airforce to us towards
 24 Japan, for instance, could no longer be expected on
 25 that occasion. Moreover, it is feared that Japan's

1 request for cooperation might possibly be rejected
2 when it is actually needed.

3 "So far is my humble opinion as to the
4 measures to maintain the friendly relations with
5 Italy while avoiding to be engrossed in it. I
6 should be very much obliged if you would reveal
7 your views of it even in outline."

8 I wish to quote as follows a passage from
9 an address of Foreign Minister HIROTA at the
10 session of the Diet on 27 July 1937, which was
11 admitted as exhibit No. 2497 in transcript pages
12 20,818 - 20,819:

13 "As regards the present incident, the
14 Japanese Government have maintained a policy of
15 seeking a settlement on the spot and nonaggravation
16 of the situation," speaking of the China problem,
17 showing that Japan was continually striving to
18 settle the China problem because of the menace of
19 Russia on the north.

20 I now refer to exhibit 486-A (transcript
21 pages 5975-5980) of the 28th of August, 1937, to
22 show that Germany was opposed to the China Incident,
23 keeping military advisors in and supplying weapons
24 to China despite Japanese protests, which shows that
25 there was no effective collaboration between Japan

1 and Germany as a result of the anti-Comintern
2 relations.

3 I draw the attention of the Tribunal
4 to the testimony of HASHIMOTO, Gun, Chief Staff
5 Officer of the China Garrison Army, about the time
6 the China Incident broke out, in his affidavit
7 admitted as exhibit No. 2487, in transcript
8 page 20,623. The witness HASHIMOTO testified that,
9 immediately after the outbreak of the Marco Polo
10 Bridge incident the Chief of General Staff, by
11 telegram to the command of the China Garrison Army,
12 "ordered adherence to the non-spreading policy, and
13 especially the avoidance of the use of force to
14 prevent the spreading of the incident," proving,
15 as I say, the same contention that Japan was trying
16 to keep at peace with China to avoid the menace of
17 Russia on the north.

18 I wish to correct that. That is "twenty"
19 instead of "2000" in the record.
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1 Referring to exhibit No. 2488, I call the
2 attention of the Court to the following passages in
3 the testimony of the witness TANAKA, Shinichi in his
4 affidavit admitted as exhibit No. 2488.

5 "According to the information received by
6 the General Staff as to the Russian preparations for
7 war with Japan, she had a standing peace-time strength
8 of 28 sniper divisions, 45 cavalry divisions, 6 mech-
9 anized brigades and 1,900 aircraft for the Far East.
10 The minimum wartime strength that she could use
11 against Japan amounted to 31 or 50 divisions."

12 THE PRESIDENT: Mr. Tavenner.

13 MR. TAVENNER: If the Tribunal please, it
14 is, of course, too late to object to the reading of
15 that passage into the transcript, but I would like to
16 point out, for the sake of other documents which will
17 be called later, that this is a mere argument of evi-
18 dence already introduced.

19 THE PRESIDENT: Was it read before?

20 MR. TAVENNER: Yes, sir; and, therefore, the
21 material appears twice in the transcript. For that
22 reason I would like to object to that general method
23 of arguing the case at this time.

24 MR. CUNNINGHAM: That sounds very much like
25 the objection we made on the same proposition when

1 the prosecution were putting on their case in the
2 phases, and we objected because they were duplicat-
3 ing. The reason I am doing it now is to avoid bring-
4 ing a witness or preparing a special affidavit to
5 prove this one little fact which I have merely called
6 attention to in the record.

7 THE PRESIDENT: A brief reference to earlier
8 evidence, if appropriate, is not objectionable. The
9 prosecution did it during cross-examination, but they
10 merely referred to documents by number. A brief
11 description might be added. However, proceed with
12 the next matter, Mr. Cunningham.

13 MR. CUNNINGHAM: I refer now to exhibit
14 486 H, transcript page 600, 26th of January, 1938,
15 to show that, one, until 26/1/1938 Germany kept
16 military advisers in China and supplied arms to
17 China; two, change of the German policy to China was
18 caused because Germany believed in Japan's victory,
19 not necessarily because of the Anti-Comintern Pact.
20 This shows no collaboration between Germany and
21 Japan as a result of the Anti-Comintern Pact. This
22 is a prosecution document which we would have adopted
23 if the prosecution had not read it into the record
24 in toto.
25

THE PRESIDENT: You are going beyond a mere

1 description.

2 MR. CUNNINGHAM: Exhibit 592, transcript
3 page 5,888, to show that Japan refused to grant
4 Germany any preferential treatment concerning trade
5 in comparison with third powers shows definite lack
6 of collaboration between the two countries.

7 MR. COMYNS CARR: Transcript page 6,588.

8 MR. CUNNINGHAM: 6,588. I suggest that
9 exhibit 592 is transcript page 6,588.

10 I now refer to exhibit 594, transcript page
11 6,597 to 99 to show that in North China no preferen-
12 tial treatment, even no favorable consideration, was
13 given to German trade in Japan. Page 6,597 to 6,599
14 of the record.

15 Next I refer to exhibit 595, which is pages
16 6,606 to 6,616 of the record, to show that Japan
17 caused heavy damage to important German commercial
18 interests in China, which shows that there was no
19 effective collaboration between the two countries.

20 I now offer defense document 1477. Para-
21 graph one is all that I'm interested in in that docu-
22 ment, and I only wish to read that into the record
23 rather than offering the document and having it pro-
24 cessed through the document division.

25 THE PRESIDENT: General Vasiliev.

1 GENERAL VASILIEV: May it please the Tri-
2 bunal, we object to this document. It deals with
3 Germany's claims in respect of preferential economic
4 treatment in China and with the controversy in this
5 issue between Germany and Japan. I cannot understand
6 in what way this document is relevant. There always
7 could be and probably were certain controversies and
8 disputable questions between Germany and Japan, and
9 this does not preclude the military and political
10 alliance between them, the documents concerning which
11 were submitted by the prosecution. The document
12 introduced by the defense neither proves nor refutes
13 any issues of this case. Therefore, it is of no
14 help. I ask to reject this document as irrelevant.

15 MR. CUNNINGHAM: To show that the document --
16 the Anti-Comintern Pact had no military aspects and
17 was made in 1926 and still, in 1938, Japan was ne-
18 gotiating with Germany to withdraw the military advis-
19 ers in China occurs to me to show that there was no
20 effective collaboration between the two nations ex-
21 cept against communism.

22 THE PRESIDENT: Yes, Mr. Cunningham. Do
23 you wish to say anything?

24 MR. CUNNINGHAM: I finished.

25 THE PRESIDENT: By a majority, the Tribunal

1 upholds the objection and rejects the document.

2 MR. CUNNINGHAM: I now offer in evidence
3 only one portion of defense document 1177, broadcast
4 of Prince KONOYE on the 3rd of November, 1938, in
5 which Prince KONOYE, Prime Minister of Japan at the
6 time, expressed Japan's determination to eradicate
7 communistic influence in China, which was the grav-
8 est menace to Japan.

9 You don't have that document? Well, we'll
10 pass by that.

11 MR. COMYNS CARR: It has already been re-
12 jected once on the ground that it is already an ex-
13 hibit.

14 THE PRESIDENT: It would be rejected again
15 for the same reason.

16 MR. CUNNINGHAM: If it is already an exhibit,
17 I would like to read a few lines from it.

18 "Japan is in no way opposed to collaboration
19 with foreign powers nor does she desire to impair
20 their legitimate rights and interests. If the powers,
21 understanding her true motives, will formulate poli-
22 cies suited to the new conditions, Japan will be
23 glad to cooperate with them."
24

25 THE MONITOR: Mr. Cunningham, from what
page are you reading, sir?

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19 with foreign powers nor does she desire to impair
20 their legitimate rights and interests. If the powers,
21 understanding her true motives, will formulate poli-
22 cies suited to the new conditions, Japan will be
23 glad to cooperate with them."

24 THE MONITOR: Mr. Cunningham, from what
25 page are you reading, sir?

1 MR. CUNNINGHAM: Page 4.

2 THE MONITOR: Thank you.

3 MR. CUNNINGHAM: Document No. 1177.

4 THE MONITOR: Please proceed.

5 MR. CUNNINGHAM: (Reading) "Japan's zeal
6 for combatting communism is certainly well known by
7 this time. The aim of the Comintern is to sovietize
8 the Orient and to overturn the world. Japan is firm-
9 ly determined to eradicate the communistic influence
10 which is behind the so-called 'long term resistance'
11 of the Chiang regime."

12 I now offer defense document 1312 in evi-
13 dence. It will be shown by this document that in
14 November, 1938 Germany was protesting to Japan, and
15 vigorously, as to the discriminatory treatment she
16 was receiving in China in the economic field. There
17 was, in fact, no collaboration between Japan and
18 Germany in China.

19 THE PRESIDENT: General Vasiliev.

20 GENERAL VASILIEV: I object to this document
21 on the same ground upon which I objected to the docu-
22 ment 1477 which was rejected by the Tribunal. This
23 is practically an identical document. It also deals
24 with the question of economic relations between
25 Germany and Japan in China. This document is

irrelevant to any issues in this case in the same degree as document 1477.

THE PRESIDENT: Yes.

MR. CUNNINGHAM: I submit that it isn't too important that we have this document because I'm satisfied that the prosecution's documents that are referred to as exhibits have established the fact that there was no effective collaboration between Japan and Germany after the Anti-Comintern Pact and have done it emphatically.

THE PRESIDENT: By a majority, the Tribunal upholds the objection and rejects the document.

MR. CUNNINGHAM: I now offer only a portion of defense document Nos. 206 (28 and 29), excerpts from the book "Ten Years in Japan" by Ambassador Grew, in evidence to show that, although the negotiations between Japan and Germany were carried on until 1939, the trend of events gradually obligated Japan as early as in the middle of April and May of the same year to launch into another course -- new course of policy under strictest secrecy, parallel with the negotiations with Germany and Italy. And this document, as you know, is the diary of the man who is considered one of the best known authorities on Japanese-American relations alive.

1 THE PRESIDENT: General Vasiliev.

2 GENERAL VASILIEV: If it please the Tri-
3 bunal, I would like to object to the document
4 206 (28). In this case, the book written by Mr.
5 Grew is not sufficient evidence because the things
6 related by Mr. Grew in this book were told to him
7 by a man whose name was Doonan and who received
8 this information from YONAI. I don't think evidence
9 of such kind should be admitted.

10 MR. CUNNINGHAM: Your Honor, I withdraw
11 the documents to save any unnecessary delay in the
12 matter because I have sufficient proof on this
13 specific problem on other matters.

14 I now offer in evidence defense document
15 1314 which is a telegram from the German Foreign
16 Office, sent by German Undersecretary of State
17 Weizacker to the German Ambassador in Tokyo. This
18 is the German draft of the proposed treaty known
19 as the "Strengthening Anti-Comintern Pact" between
20 Japan, Germany and Italy and also shows the situa-
21 tion of the negotiations thereupon which were under
22 way at that time between the three countries.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Defense document 1314
25 will receive exhibit No. 2619.

1 (Whereupon, the document above re-
2 ferred to was marked defense exhibit No.
3 2619 and received in evidence.)
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MR. CUNNINGHAM: Skipping the formal parts:

"Personally for the Ambassador:

"Enclosed herewith you receive the papers announced in the telegram No. 158 for your personal information. They are:

"1) The draft of a pact of consultation and assistance between the German, Japanese and Italian Governments, consisting of

"(a) the pact proper

"(b) the signing protocol, and

"(c) the secret accessory protocol;

"2) The draft of a new article, to be inserted in the pact before the last article, concerning the relation of the tripartite pact to the pact between Germany and Italy;

"3) Draft of a note, to be presented by the Japanese Ambassador before signing, concerning eventual explanation of the Japanese Government on diplomatic inquiries;

"4) Draft of a formulated declaration to be made verbally by the Japanese Ambassador likewise before signing.

"The concurrence of the Japanese Government to the papers 2, 3, and 4 has not yet been obtained.

"The texts of the above-mentioned papers

1 are as follows: (specifically, the whole enclosure
2 in blue-cross, then the enclosed papers)."

3 - - -

4 "Pact of Consultation and Assistance
5 between Japan, Italy, and Germany.

6 "The Imperial Japanese Government,

7 "The Italian Government,

8 "and the Government of the German Reich,

9 "in appreciation of the fact that the
10 friendly relations between Japan, Italy, and Germany
11 since the conclusion of the Agreement against the
12 Communist International of the 25th November 1936
13 have grown in cordiality,

14 "in the conviction, that the international
15 activities of the Communist International threaten
16 the peace in Europe and Asia,

17 "determined in the spirit of the above-
18 mentioned Agreement to strengthen the defense against
19 the communistic disintegration in Europe and Asia,
20 and to preserve the common interests of the three
21 contracting powers,

22 "have agreed upon the following provisions:

23 "Article I.

24 "In case one of the contracting powers should
25 be drawn into difficulties by the attitude of a power

1 or powers not party to this pact, the contracting
2 powers shall enter forthwith into a consultation
3 concerning measures to be taken jointly.

4 "Article II.

5 "In case one of the contracting powers should
6 be threatened without provocation by a power or powers
7 not party to this pact, the other contracting powers
8 engage to render to the threatened power political
9 and economic support for the removal of this threat.

10 "Article III.

11 "In case one of the contracting powers should
12 become object of an unprovoked attack on the part of
13 a power or powers not party to this pact, the other
14 contracting powers engage to render their help and
15 assistance.

16 "The three contracting powers shall in this
17 case forthwith consult and decide the necessary
18 measures for carrying out the obligation provided
19 in the foregoing paragraph.

20 "Article IV

21 "The official text of this pact is pre-
22 pared in the Japanese, Italian and German languages.

23 "The pact comes into force on the day of
24 signing and remains in effect for the period of five
25 years. The contracting powers will at a proper date

1 prior to the expiration of this term come to an
2 understanding as to the future form of their co-
3 operation.

4 "As in evidence thereof the plenipotentiaries,
5 duly entrusted their governments, signed and sealed
6 this pact.

7 "Three official copies were prepared in --",
8 so and so.

9 - - -

10 "SIGNING PROTOCOL

11 "On the occasion of the signing of the
12 pact which was concluded today, the plenipotentiaries
13 have agreed upon the following:

14 "(A) Concerning Article II and III of the
15 pact, the threat or the attack against Manchukuo
16 shall be considered, in view of the provision of the
17 second paragraph of the Protocol concluded between
18 Japan and Manchukuo of the 15th September 1932,
19 as the threat or the attack against Japan.

20
21 "(B) Concerning the second paragraph of
22 Article IV of the pact, in case at the time of the
23 expiration of its term support or help and assist-
24 ance based on Article II or III is still being
25 rendered, the pact remains in force until the end
of the situation, which necessitates the support

1 or help and assistance."

2 - - -

3 "SECRET ACCESSORY PROTOCOL

4 "On the occasion of the signing of the
5 pact which was concluded today, the named plenipo-
6 tentiaries have agreed upon the following:

7 "(A) Concerning Article II and III of the
8 pact the competent authorities of the three contract-
9 ing powers shall examine in advance, as soon as pos-
10 sible after the pact becomes effective, what indi-
11 vidual possibilities of conflict exist and in what
12 manner and to what extent the contracting powers
13 shall render each other support or help and assist-
14 ance according to the geographical circumstances.

15 "(B) In case of a war commonly fought by
16 them the contracting powers engage not to make
17 separate armistice or peace.

18 "(C) In case obligations exist based on
19 the existing treaties with third powers, which are
20 in contradiction to the provisions of this pact, the
21 contracting powers shall not be bound by such obli-
22 gations.

23 "(D) This secret accessory protocol shall
24 neither be published nor communicated to third powers
25 without consent of the contracting powers.

1 or help and assistance."

2 - - -

3 "SECRET ACCESSORY PROTOCOL

4 "On the occasion of the signing of the
5 pact which was concluded today, the named plenipo-
6 tentiaries have agreed upon the following:

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8 pact the competent authorities of the three contract-
9 ing powers shall examine in advance, as soon as pos-
10 sible after the pact becomes effective, what indi-
11 vidual possibilities of conflict exist and in what
12 manner and to what extent the contracting powers
13 shall render each other support or help and assist-
14 ance according to the geographical circumstances.

15 "(B) In case of a war commonly fought by
16 them the contracting powers engage not to make
17 separate armistice or peace.

18 "(C) In case obligations exist based on
19 the existing treaties with third powers, which are
20 in contradiction to the provisions of this pact, the
21 contracting powers shall not be bound by such obli-
22 gations.

23 "(D) This secret accessory protocol shall
24 neither be published nor communicated to third powers
25 without consent of the contracting powers.

1 "(E) This secret accessory protocol has
2 the same term of validity as the pact and the signing
3 protocol. It forms with these both an integral unit."

4 - - -

5 "PAPER NO. 4

6 "On instruction by my Government I ask
7 your Excellency to take note that Japan can carry
8 out the obligations, accepted in Article III of the
9 pact, to render help and assistance in a military
10 respect at the present and in the immediate future
11 only to a restricted extent. The details as to the
12 military assistance to be rendered from time to time
13 in the future, shall be reserved to the discussions
14 provided in the secret accessory protocol."

15 THE PRESIDENT: We will adjourn now until
16 half-past nine tomorrow morning.

17 (Whereupon, at 1600, an adjournment
18 was taken until Tuesday, 20 May 1947, at 0930.)
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